

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

(PC) CRIMINAL APPEAL NO 09 OF 2022

(Arising from Criminal Appeal No 34 of 2021 in the District Court of Musoma,

Originating from Criminal Case No 18 of 2021 at Bukwaya Primary Court)

VINCENT MONGU APPELLANT

VERSUS

KUBOJA MAKOKA RESPONDENT

JUDGMENT

9th Aug, & 9th Aug, 2022.

F. H. Mahimbali, J.

The appellant in this case has been aggrieved by the decision of the District Court of Musoma which upheld the decision of the trial court on the charge of Criminal trespass contrary to section 299 (a) of the penal code. Aggrieved by that decision he has appealed to this court armed with three grounds of appeal namely:

- 1. That, the 1st Appellate Court misconceived itself in law and in facts by upholding the decision of the trial court and*

ignored the fact that respondent did not prove his case beyond reasonable doubt.

a. That, the 1st Appellate Court misdirected itself in law and in facts for upholding the decision of the trial court while there was still an existing land dispute between the parties which was not yet fully resolved by the proper forum for determining land ownership.

b. That, the 1st Appellate court misdirected itself in law and in facts for upholding the trial court's decision while the trial magistrate was biased against the appellant when determining the Criminal Case No 18 of 2021.

When the appeal was called today for hearing, both parties appeared in person and argued their appeal. Whereas the appellant insisted for the appeal to be allowed, the respondent on the other hand prayed that it be dismissed with costs.

Upon digest to the lower court records, the charge, evidence and the parties' submission to this case, it is clear that the dispute involving these parties is not criminal trespass as charged but land dispute between them. It appears, as per evidence in record the appellant is not dissatisfied with the findings of the land courts. So long as the

respondent has already been declared by land court that he is the lawful owner of the suit premises (see PC Civil Appeal No 53 of 1988 dated 1st June, 1989 and Land Appeal 103 of 2014 dated 11/11/2015 both of High Court - Mwanza) the only available legal course for appellant is either to abide by that decision or appeal against it to the higher/highest court for the right determination.

I am aware that where two parties claim to a dispute of land, there is no criminal trespass in it. However, where the land court/appropriate tribunal rules so, the dissatisfied party has either to appeal or abide by it. Failure of it, the continuing use of the decreed land to the other party may amount to either criminal trespass or disobedience to lawful order of the court. The right course then to be taken is either to execute the final court's order or be prosecuted for Criminal Trespass.

As per facts and evidence of this case, it is clear that the appellant has no justifiable cause of continuing using the land which has been decreed as the respondent's property. That said, this appeal is of no merit against the respondent. The respondent is further advised to get legal assistance of executing the court's decree which granted him with the said decree if not yet done so.

The appeal is hereby dismissed. Considering the nature of the parties each party shall bear its own costs.

DATED at MUSOMA this 9th day of August, 2022.



F. H. Mahimbali

Judge

Court: Judgment delivered this 9th day of August, 2022 in the presence of the both parties and Mr. Gidion Mugo – RMA

F. H. Mahimbali

Judge

9/8/2022