

**IN THE HIGH COURT THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**CRIMINAL APPEAL NO. 81 OF 2021**

*(Originating from Criminal Case No. 46 of 2020 of the Kahama District Court)*

**SHABANI MANENO @ SAFI.....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**JUDGMENT**

*26<sup>th</sup> April, & 6<sup>th</sup> May, 2022*

**MKWIZU J:**

At the Kahama District Court, appellant one Shabani Maneno @ Manee was charged with the offence of Disobedience of the lawful Order Contrary to section 124 of the Penal Code [Cap. 16 R.E. 2019]. He was alleged to have on 27/7/2019 at about 11.30 hrs at Ubilimbi Village, Kinaga Ward within Kahama District in Shinyanga region, refused to vacate the suit land to give vacant possession to one Lukas Kuyela , the lawful order issued by the Land and housing Tribunal Kahama

The facts as gathered from the records are that the appellant was A judgment debtor in in Land Misc. Application No. 83 of 2018 whereas PW1 one Lucase Kuyela was the decree holder. On the 16/11/2018 the Kahama District Land and Housing Tribunal appointed the WEO of Kinaga to evict the Judgment debtor (Appellant) from the disputed land and handle it to the Decree holder (PW1). The order was successfully executed by WEO as directed by the Tribunal as evidenced by the letter written to PW1 by WEO

on 27/7/2019 which is supported by PW1, PW2, and PW4's evidence. Sometimes later in January 2020, the appellant was arrested and charged with the offence of disobedience of the lawful order of the land tribunal. After a full trial, appellant was found guilty and accordingly sentenced to six months community service.

Dissatisfied, appellant has appealed to this court on both conviction and sentence on 5 grounds of appeal as follows ;

- 1. That the learned trial magistrate erred in law and fact in holding that the order (exhibit P1) was directed to the appellant*
- 2. That the learned trial magistrate erred in law and in facts in holding that appellant entered the suit property basing on evidence of PW1 and PW4.*
- 3. That the learned trial magistrate erred in law in entertaining the matter in which the alleged complainant (PW1) had no authority to instituting criminal case against the appellant in relation to the said suit property.*
- 4. That the learned trail magistrate erred in law and facts in holding that the discrepancies and contradiction on prosecution evidence are minor.*
- 5. That the learned trial magistrate erred in law and in facts in holding that the prosecution proved the case against appellant beyond reasonable doubt.*

When the appeal came for hearing, Mr. Bakari Chubwa Muheza advocate for the appellant while the respondent/ Republic was represented by Mr.

Nestory Mwenda, learned State Attorney. They both supported the appeal on the ground that the prosecution failed to prove the alleged disobedience. The learned State Attorney was straight to the point that, having executed the order to the fullest, then any encroachment thereafter would fall to criminal trespass and not otherwise and having admitted that he filed a criminal trespass charged against the appellant in which the appellant was acquitted, then it was illogical to come back and institute the present proceedings in court. The only proper remedy was to appeal against that a decision. He on that basis prayed for the court to allow the appeal.

Generally, the appeal is meritorious as suggested by both counsels. The record is clear that on 16/11/2018 the tribunal through exhibit P1 did order the WEO(PW4) to handle the suit land to PW1. The order reads:

*"As the Judgment debtor neglected to adhere to the Tribunal Order dated 27/06/2018, WEO Kinaga is hereby appointed to evict the Judgement debtor from the disputed land and handle it to the decree Holder..."*

According to PW4, the order was executed on 27/7/2019 and he on the same date wrote a letter (exhibit P2) to the decree Holder handing over to him the said land. This is supported by PW1 at page 16 of the proceedings where, the decree holder categorically admitted having been handled the suit land on 27/7/2019 and that such a handing over exercise was witnessed by other Village leaders and the police. His evidence goes thus:

*"The WEO handled the land to me on 27/7/2017 in front of the Village Executive officer, three police officers and members of ward land tribunal Kinaga"*


There is nothing in the entire proceedings pointing to the appellants denial to obey the tribunal's order as alleged, instead, the prosecution evidence reveals that the order was fully executed and that the encroachment by the appellant, if any, came later which cannot by any standards amount to disobedience of a court order. I am in all fours with the learned State Attorney that, having been handled his land, any encroachment thereto attracts a charge of criminal trespass. See the decision in **Simon Mapurisa v. Gasper Mahuya**, Criminal Appeal No. 221 of 2006 (unreported)

In his evidence, during cross examination PW1 (the decree holder) confirmed to the court that, after the alleged tress pass, he filed criminal charged for trespass against the appellant, but the appellant was found not guilty. On that a situation, it was illogical, as the learned State Attorney put it, to come back to court and file another charge for disobedience of the court order. He had no such an option. The only remedy available to him was to appeal against that decision. This criminal charge was therefore wrongly instituted.

As stated earlier, the appeal has merit. It is accordingly allowed. conviction is quashed and sentence and other resultant order(s) given against the appellant are set aside.

It is ordered

**DATED at Shinyanga this 6<sup>th</sup> day of May 2022.**

  
**E.Y. MKWIZU**  
**JUDGE**  
**6/05/2022**

**COURT:** Right of appeal explained.

  
**E.Y. MKWIZU**  
**JUDGE**  
**6/05/2022**