

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOB A DISTRICT REGISTRY

AT BUKOB A

(PC) CRIMINAL APPEAL NO. 4 OF 2022

(Arising from Criminal Case No. 51 of 2020 Kyaka Primary Court and Criminal Appeal No. 12 of 2020 Bukoba District Court)

ELIETH ISMAIL.....APPELLANT

VERSUS

ESTER MATHIAS.....RESPONDENT

JUDGMENT

21/07/2022 & 22/08/2022

E. L. NGIGWANA, J.

Before the Primary court of Kyaka, the respondent Ester Mathias was charged with the offence of assault causing actual bodily harm contrary to section 241 of the Penal Code cap. 16 R: E 2019.

The particulars of the offence were to the effect that; on 08/02/2020 at 20:00hours at Muisa Village, Ward of Kyaka within Misenyi District in Kagera Region, the respondent did assault the appellant by punching her i the mouth. When the charge was read over and explained to the respondent, she denied the allegations.

After a full trial, the respondent was acquitted on the ground that the case had not been proved beyond reasonable ground.

Aggrieved by the decision of the trial court, the appellant unsuccessfully appealed to the District Court of Bukoba at Bukoba and thus, this is the

second appeal. In the Petition of Appeal, the appellant faults the acquittal on the following ground;

"That, both the lower courts erred in law and facts by failure to appreciate that the appellant had proved the case beyond all reasonable doubt"

At the hearing of this appeal, both parties appeared in person and unrepresented. Briefly, the appellant submitted that her case had been proved beyond reasonable doubt therefore, the respondent was wrongly acquitted.

On the other hand, the respondent stated that the case had not been proved beyond reasonable doubt therefore, she was properly acquitted. She ended urging this court to dismiss this appeal for want of merit.

In the course of reading the judgment of the appellate court for the purpose of determining whether this appeal has met or not, I asked myself a question whether the judgment of the appellate court is real a judgment in the eye of the law.

There is no doubt that, in matters arising from Primary Court, appeal lies to the District Court. Section 20 (1) (a) of the Magistrates Courts Act Cap. 11 R: E 2019 provides;

"(1) Save as hereinafter [provided-

- (a) In proceedings of a Criminal nature, any person convicted of an offence by a Primary Court, or where any person has been acquitted by a Primary Court the complainant or the Director of Public Prosecutions, if aggrieved by an order or decision of the*

Primary court, may appeal therefrom to the District court of the district for which the Primary Court is established".

As per herein above provision of the law, the first appellate court is the District Court; in our case, the District Court of Bukoba. The duty of the first appellate court is to re-appraise; re-assess and re-analyze; the evidence on record before it and arrive at its own conclusions on the matter and give reasons either way. See **Siza Patrice versus Republic**, Criminal Appeal No. 19 of 20110, CAT (Unreported).

In the first appellate court, Appeal No.12 of 2020 was disposed of by way of written submissions, whereas, the magistrate had this to say;

"Having gone through the trial court records and submissions, the issue for determination is whether or not the trial court as per tendered evidence before erred in law and fact in acquitting the respondent.

As per evidence tendered before the trial court, I find it proper that the trial court was legally right in acquitting the respondent as the appellant failed to properly prove her case beyond reasonable doubts. The appellant in her submission argued that she had established her case but establishing a case (prima facie case) does not automatically make the accused convicted before the court. The trial magistrate evaluated the evidence fully and reasoned proper on section 241 of the Penal Code stipulating the ingredients of the offence the accused was charged with which did not exist hence acquitted the respondent. In the event, I hereby dismiss this appeal for lack of merit".

In the case of **Siza Patrice versus Republic** (Supra) the Court of Appeal held that;

"We understand that it is settled law that a first appeal is in the form of a re-hearing. As such, the first appellate court has a duty to re-evaluate the entire evidence in an objective manner and arrive at its own finding of fact, if necessary". See also **R.D. Pandya versus Republic** (1957) EA 336.

In the instant case, reading the judgment of the 1st appellant court, it is apparent that the first appellate court did not discharge its duty, as a result, its judgment does not qualify to be termed as a well written and reasoned judgment. By merely making plain references to the evidence adduced in the trial court without re-evaluating it entirely is not acceptable. There is a well- settled principle that each case has to be decided in its own facts, and circumstances. In the instant matter, the complaint of the appellant was about evidence. According to her, the evidence adduced before the trial was watertight, while the respondents believed that the said evidence was very weak. In such a situation, re-evaluation of the evidence was inevitable. The first appellate court was expected to analyse the testimony adduced by witnesses and exhibits if any and weigh them to see if the standard of proof in criminal case was met or otherwise. This duty is the same as appraising the cardinal Principle that justice should not only be done but should be seen being done.

In the upshot, I quash and set aside the purported judgment and order the appellate Magistrate Hon. D.P. Nyamkerya to compose a properly

and legally acceptable judgment as soon as possible. The proceedings of the trial court and those of the 1st appellate court remain intact.

It is so ordered.

Dated at Bukoba this 22nd day of August 2022.

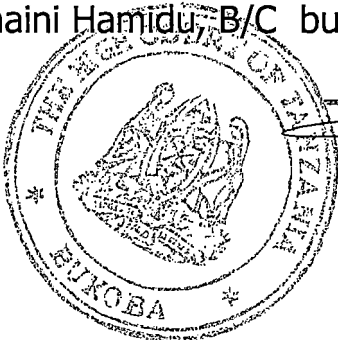



E.L. NGIGWANA

JUDGE

22/08/2022

Judgment delivered this 22nd day of August, 2022 in the presence of the Appellant in person, Hon. E. M. Kamaleki, Judges' Law Assistant, Ms. Tumaini Hamidu B/C but in the absence of the respondent.




E. L. NGIGWANA

JUDGE

22/08/2022