

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

(PC) CRIMINAL APPEAL NO. 05 OF 2022

(Originating from the District Court of Iramba at Kiomboi in Criminal Appeal No. 2 of 2022 which arose from Nduguti Primary Court in Criminal Case No. 132 of 2021)

DANIEL MKILANYA.....APPELLANT

VERSUS

JUMA GUNDA KINGU..... RESPONDENT

JUDGMENT

Date of Last Order: 27/09/2022

Date of Judgment: 03/10/2022

Mambi, J.

This judgment emanates from an appeal preferred by the appellant **DANIEL MKILANYA**. Earlier on the respondent preferred criminal charges of malicious injuries to property c/s 326(1) of the Penal Code Cap. 16 R: E 2019 against the appellant at Nduguti Primary Court. It was alleged by the prosecuting party (the respondent) that on 19/3/2021 at 15:00Hrs at Ishenga Village within Mkalama District in Singida Region, the appellant (accused) willfully and unlawfully grazed his cattle on his (the

respondent) farm damaging his crop seedlings causing a loss amounting to the tune of Tsh. 941,500/=. The trial Court decided in favour of the appellant (accused) by acquitting him from the charges.

Aggrieved, the respondent appealed against the decision at the District Court of Iramba. The District Court reversed the decision of the trial Court by convicting the appellant as charged. The appellant was also sentenced to pay a fine of Tsh. 200,000/= or in default to serve a six months in prison. The appellant was further ordered to pay Tsh. 941,500/= in compensation.

Dissatisfied, the appellant is before this Court doors in search for justice. The appellant marshaled four related grounds of appeal which in essence he faults the District Court decision for convicting him relying on weak evidences from the respondent.

When the matter was up for hearing before this Court, both parties appeared unrepresented and both parties prayed to adopt the grounds of appeal and reply thereof.

I have carefully gone through the grounds of appeal, reply and the records from the trial Court and the District Court. The main issue for determination before this Court in my view is whether the respondent (the prosecuting party) proved his case in the standard required in criminal law.

It is trite law that in criminal cases the burden of proof has always remained on the prosecution throughout to establish the case against the accused beyond reasonable doubt. The rationale for this principle and legal position is that since the burden lies throughout on the prosecution, the accused has no burden or onus of proof except in a few cases where

he would be under the burden to prove certain matters. This position was clearly clarified and underscored by the court in ***Milburn v Regina [1954] TLR 27*** where the court noted that:

"it is an elementary rule that it is for the prosecution to prove its case beyond reasonable doubt and that should be kept in mind in all criminal cases".

There is no doubt as this court has already alluded above, that a party in a criminal case must, as the law requires, prove the charges against the accused beyond reasonable doubt. This implies that the prosecution evidence must be strong to leave no doubt to the criminal liability of an accused person.

Looking at the records, it is clear that the evidence produced by the prosecuting party (the respondent) at the trial Court, reveal that the respondent proved his case beyond reasonable doubt. In this regard, I agree with the respondent submission that he proved that the appellant's cattle destructed his farm that had crops. This means that the complaints by the appellant (who was the accused) that the prosecution (the respondent) at the trial court failed to prove his case beyond reasonable doubt are devoid of merit.

Looking from the sequence of events in the records from date the respondent (PW1) apprehended the appellant's (accused's) cattle grazing on his farm on 19/3/2021 at 15:00Hrs, it is clear that the appellant's cattle grazed and destructed the respondent's farm. It is also on the records that, the appellant ran away when the respondent raised an alarm.

Looking at the defence evidence, the appellant (accused) Daniel Mkilanya who was referred as DW in his testimony denied his involvement claiming that on the material date he went to *'gulioni'*. However, the

appellant (referred as DW at the trial court) did not call any witness to show that he was at 'gulioni' at all material day. However, the appellant cattle found on the respondent's farm belonged to one Danson Pyuza. It appears the appellant was not telling the truth in his statement as while he admitted that at one time he grazed the cattle but later he left those cattle to be grazed by another person. The trial court records reveal that the appellant (DW) in his testimony further stated that, on the material day it was the son of Danson Pyuza (the cattle owner), who was grazing and not him. The testimony by the appellant seems to be untrustworthy as the District Court rightly found that it was an afterthought.

There are ample circumstantial evidence proving that the appellant omitted his livestock to graze freely as result they destructed the respondent's crops seedlings. Indeed circumstantial evidence can also be relied to find someone guilty as did by the District Court. Reference can be to the decision of the court in **NATHAEL ALPHONCE MAPUNDA and ANOTHER V. REPUBLIC [2006] TLR 395)** where the court held that:

"Where circumstantial evidence is relied on, the principle has always been those facts from which an inference of guilt is drawn must be proved beyond reasonable doubt".

The conduct of an accused person (the appellant) before and after the apprehension of the cattle show the accused intentionally grazed his cattle at the respondent's farm. The conduct of the appellant can be reflected when the respondent raised an alarm when he saw the cattle grazing at his farm but the appellant in this did not respond to the alarm. However, when the cattle were apprehended, the appellant he appeared

at the village office ready to make an agreement with the respondent. It is also on the records that the appellant (accused) was handled his cattle on agreement that they would negotiate for compensation, on the next day, . However, on the next day, the appellant (accused) refused to negotiate. This show that the cattle arrested at the respondent's farm belonged to the appellant. In this regard, from the evidence it is clear that the appellants' cattle grazed and destructed the respondent's farm. This means that the District Court was right to draw a negative inference on the appellant's conducts before and after his cattle were apprehended at the respondent's farm. In other words it was wrong for the trial primary court to exonerate the appellant from his charges.

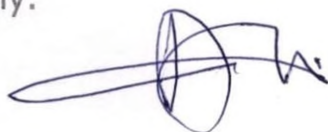
I thus have no reason to depart from the decision of the District Court and find the grounds of appeal are unmerited. Therefore, taking into account the fact that the grounds raised by the appellant have no merit since the District Court properly made its decision, this court hesitates to interfere with the decision and uphold the decision of the District Court.

In the premises and basing on the above reasoning, I have no reason to fault the findings reached by the District Court rather than upholding its decision.

However, this Court is of the considered view that the amount of compensation ordered by the District Court was excessive which warrants the interference of this court. I thus reduce the amount ordered by the District Court to Tsh. 500,000/=. The appellant shall pay the respondent by instalment in three terms within three months from 1st day of December 2022.

The appellant will be at liberty to pay the whole amount of money at once if he wishes to do so. In the event as I reasoned above, this appeal is partly allowed to the extent of the orders made in this judgment.

Order accordingly.



A. J. MAMBI

JUDGE

13/10/2022

Judgment delivered in Chambers this 13th day of October, 2022 in presence of all parties.




A. J. MAMBI

JUDGE

13/10/2022



Right of appeal explained.


A. J. MAMBI
JUDGE
13/10/2022