

IN THE HIGH COURT OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

PC. CRIMINAL APPEAL NO. 3 OF 2020

(Arising from the decision of District Court of Urambo at Urambo in Criminal Case No. 9/2019 which originated from decision of Urambo Urban Primary Court in Criminal Case No. 387 of 2019)

ULIMWENGU MORAD..... APPELLANT

VERSUS

LUGONDA NTAMI.....RESPONDENT

JUDGMENT

Date of Last Order: 30/9/2022

Date of Delivery: 13//12/2022

AMOUR S. KHAMIS, J:

Ulimwengu Morad initiated Criminal Proceedings in the Urambo Urban Primary Court against Lugonda Ntami for the offence of wilful and unlawful destruction of property. The trial primary Court acquitted Lugonda Ntami for the offence charged but convicted him for the offence of negligence.

On appeal by Lugonda Ntami the District Court of Urambo in Criminal Appeal No. 9 of 2019, did set aside the trial court's decision.

Aggrieved by the District Court's judgement, Ulimwengu Morad filed the present appeal on five grounds, namely;

1. That the appellate court erred both in law and fact for making decision basing on the submission which was made basing on irrelevant citation.
2. That the appellate magistrate erred both in law and fact for making decision on the fact that the respondent was denied the right to mitigation and the right to be heard, since the trial judgement contains evidence of the respondent and his witnesses, also on the date of judgment delivery he absent himself without any reasons.
3. That the appellate magistrate erred both in law and fact for making decision basing on the fact that the respondent was sick on the day of judgement without any medical evidence evidencing that he was admitted to hospital for treatment.
4. That the appellate magistrate erred both in law and fact for not taking into consideration the submission of the appellant dulling appeal.
5. That the magistrate erred both in law and fact for making decision basing on evaluation report made by the agriculture officer which is neither a statutory provision nor a decision by the Court of records able to bind subordinate Courts when making decision.

Upon being served with the Petition of Appeal, Lugonda Ntami filed a reply to the Petition of Appeal, thus:

1. That, the contents of paragraph number 1 of the petition of appeal are disputed, the respondent further submits that, the appellate Court was correct to make decision basing on the submission of the respondent.
2. That, the content of paragraph number 2 of the petition of appeal is strongly disputed the respondent further submits that the appellate court was correct to realize that the right to mitigation and other right to be heard to the accused person was not given before primary court.
3. That the content of paragraph number 3 of the petition of appeal is strongly disputed the respondent further submits that the accused person craved leave for absence due to the sickness as shown by trial magistrate in the Judgement.
4. That, the content of paragraph number 4 of the petition of appeal is strongly disputed, the respondent further state that the appellate court considered the submission of appellant during the appeal.
5. That, appellate court was correct to make decision basing on evaluation report of agriculture officer as an expert of agriculture issue.

Before me, Ulimwengu Moradi was unrepresented while Lugunda Ntami enjoyed legal services of Mr. Kanisius Ndunguru learned advocate.

By consent of the parties, the appeal was canvassed by written submission and both sides adhered to the timeline set by the Court.

Having read and considered the parties' rival submissions, I did not find any substance in the respondent's contention that the appellant's submissions were filed out of time.

My reason is simple, in view of the overriding objective principle, the Court is expected to deal with cases justly and at a proportionate speed.

That aside, upon examination of the lower court's records, noted that the trial court's magistrate refused to rely on a valuation report allegedly prepared by the agriculture extension officer on the ground that he failed to enter appearance and testify in support of the same.

The appellate magistrate overtuned the trial court's decision on the ground that the expert opinion cannot be simply ignored unless it has been tested in Court.

The appellate magistrate also held that the respondent herein was not given an opportunity for mitigation.

Contrary to the appellate magistrate's findings, the trial court's records show that the respondent herein, Lugonda Ntami testified as SU1 on 19/12/2019 and immediately thereafter the trial magistrate fixed the case for judgment on 20/12/2019.

Judgement was accordingly delivered on 20/12/2019 which means that the respondent, Lugonda Ntami was fully aware of the set date.

However, Lugonda Ntami absented himself from the Court at a time of delivery of judgment without assigning any reasons.

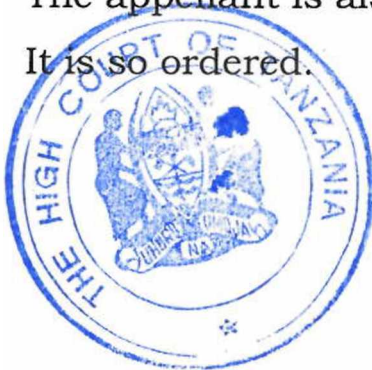
In the circumstances it is not proper, as commented by the appellate magistrate, that the respondent was not afforded an opportunity for mitigation before a sentence was pronounced.

In my view, the trial magistrate correctly ignored a valuation report allegedly made by the agriculture officer who did not enter appearance to tender it and be cross examined.

For the aforestated reasons, judgement of the District Court of Urambo in Criminal Appeal No. 9 of 2019 is hereby quashed and set aside.

The trial court's judgement in Civil Case No. 387/2019 dated 20/12/2019 is hereby upheld.

The appellant is also entitled to costs of this appeal.
It is so ordered.



AMOUR S. KHAMIS

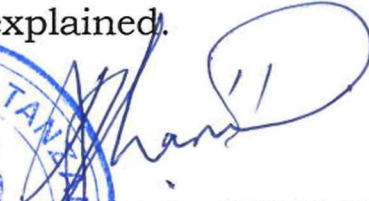

JUDGE

13/12/2022

ORDER

Judgment delivered in Chambers in presence of the appellant in person and absence of the respondent.

Right of Appeal is explained.

AMOUR S. KHAMIS
JUDGE
13/12/2022