

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MWANZA DISTRICT REGISTRY
AT MWANZA

CRIMINAL APPEAL No. 27 OF 2021

(Arising from Kwimba District Court at Ngudu in Criminal Appeal No. 11 of 2021)
(Originating from Buyogo Primary Court in Criminal case No. 30 of 2021)

MASALU NZILA APPELLANT

VERSUS

YONA MUSSA @ WALES RESPONDENT

JUDGMENT

4/8/2022 & 2/9/2022

ROBERT, J:-

The appellant, Masalu Nzila, having been aggrieved by the decision of the District Court of Kwimba in Criminal Appeal No. 11 of 2021 which reversed the decision of Buyogo Primary Court in Criminal Case No. 30 of 2021 and convicted the appellant for Reckless and Negligent acts under section 233 (d) of the Penal Code, (Cap. 16 R.E. 2019) preferred an appeal to this Court challenging his conviction and sentence by the District Court.

The facts relevant to this appeal reveals that, in the evening of the 30th day of March, 2021 the respondent went to visit his aunt for his personal concern. Having reached at his aunt's house he found two dogs (male and female) outside the house. When he tried to enter inside the house, the male dog came after him and bit his right foot from behind. He was given first aid at his aunt's house. It was later revealed that the

owner of the dog which bit the respondent was the appellant. The respondent went to the appellant's house in an effort to find a compromise on the matter but they failed to agree on the matter and the respondent reported the matter to the police station for subsequent legal action.

The matter went for trial at Buyogo Primary court. After a full trial, the trial Court acquitted the appellant for lack of evidence to prove the case beyond reasonable doubt. Dissatisfied, the respondent filed an appeal at the District Court of Kwimba vide Criminal Appeal No. 11 of 2021 which reversed the decision of the trial court by convicting the appellant and sentenced him to conditional discharge for a term of six months. The Court further ordered the appellant to pay compensation of TZS150,000/= within thirty days from the date of Judgment. Dissatisfied with that decision, the appellant preferred an appeal to this Court on the following grounds:-

- i. That the district court of Kwimba erred in law and facts by convicting and sentencing the appellant based on the circumstantial evidence which was suspicious and not connected to the facts and evidence tendered/adduced at the primary court of Buyogo.*
- ii. That the district court of kwimba erred in law and facts by convicting and sentencing the appellant herein to serve for conditional discharge of six months and payment to the respondent Tsh 150,000/= as compensation while the offense charged was not proved beyond a reasonable doubt.*

On the hearing date of this appeal, the appellant was represented by Mr. Kishosha, learned counsel whereas the respondent was present in person without legal representation.

Highlighting first on the second ground of appeal, counsel for the appellant argued that evidence adduced in the trial court was not sufficient to warrant conviction for the offence charged. He argued that when the respondent was asked by the appellant to identify which of the appellant's dogs (in the hurt) did bite him he failed to do so. He submitted further that the respondent failed to name the person who told him that the appellant's dog is the one which bit him and the said people did not testify to inform the Court how they identified the said dog to belong to the appellant. Hence, he concluded that evidence adduced was not sufficient to ground a conviction. To strengthen his argument, he cited the case of **Director of Public Prosecution Vs Delifinus Maxmilian @ Derick** Criminal Appeal No. 26 of 2020 High Court, Bukoba (Unreported) on page 9 where the Court stated the need to prove criminal cases beyond reasonable doubt.

Coming to the 1st ground, he submitted that, evidence adduced in respect of the place where the alleged crime took place is somehow contradictory. Some of the witnesses said they were told that the respondent was bitten while at the village center while others said they

were told he was bitten while at the residence of the respondent's aunt. He noted that these are two different locations.

The learned counsel submitted further that the name of the police station where the matter was reported was not mentioned, the PF3 was not tendered in Court and the medical practitioner who treated the respondent was not summoned to give evidence. He maintained that, there were weaknesses in the evidence presented in court and faulted the first appellate Court for convicting on such weak evidence. In the end, he prayed for the appeal to be allowed.

In response, the respondent submitted that the decision of the first appellate Court was based on the evidence adduced in Court. He maintained that, the witnesses who testified knew that the dog belongs to the appellant but when he went to the appellant's house to inform him he became angry and therefore he decided to leave and reported the incident at the police station where he was issued a PF3 and went to hospital. He further added that the primary court denied him the right to call witnesses and closed his submissions.

In a brief rejoinder, the appellant reacted to the allegation that the appellant was denied the right to call witnesses and submitted that, the primary court records indicates that the respondent was accorded an opportunity to call witnesses and he called his witness who testify in court.

Having heard submissions from both parties and examined records of this matter, I will pose here and make a determination on the grounds of appeal argued in this appeal.

Starting with the 2nd ground of appeal where the appellant contends that the offence charged was not proved beyond reasonable doubt. From the evidence adduced, there was no dispute that the respondent was bitten by a dog. The question for determination is whether the dog which did the biting belonged to the appellant.

The trial court records show that the prosecution lined up three witnesses to prove the charge against the appellant. The respondent (SM1) testified that he was told by a Samaritan that the dog which bit him was owned by the appellant which made him go to the appellant to compromise on the matter. The second witness (SM2) testified that they were told by the people who were at their aunt's premises that the dog which bit the respondent belonged to the appellant. The last witness (SM3) recounted that, he was told by a stranger about the incident when he was at the village centre that the dog which bit the respondent belongs to the appellant but when he went to the appellant, he denied owning the said dog.

From the evidence adduced, it is clear that the evidence of all prosecution witnesses was based on hearsay evidence. That is to say, all

prosecution witnesses testified in the trial court that, they were told by someone that the appellant is the owner of the dog which bit the respondent. None of them knew the owner of the said dog.

It is trite law that the court cannot rely on hearsay evidence to convict. That is to say, hearsay evidence has no evidential value. In the case of **Vumi Liapenda Mushi Vs R.** Criminal Appeal No. 327 of 2016 (unreported), commenting on the evidential value of hearsay evidence, the Court of Appeal of Tanzania had this to say:

"Hearsay evidence is of no evidential value. The same must be discredited."


In the present case, apart from the hearsay evidence that the alleged dog belonged to the appellant there was no evidence to establish that the alleged dog was owned by the appellant. There is nothing to establish a relationship between the said dog and the appellant considering that the appellant was not bitten by the said in the appellant's residence but somewhere else. In the circumstances, this Court finds that there was no evidence to prove the case against the appellant.

That said, I find no pressing need to deliberate on the last ground which dwells on contradictions in the prosecution evidence.

On the basis of the reasons stated, I allow this appeal, quash the conviction and set aside the sentence and orders given by the District Court.

It is so ordered.




K.N. ROBERT
JUDGE
2/9/2022