

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**PC CRIMINAL APPEAL NO. 14 OF 2021**

**(Arising from the decision of the District Court of Musoma at  
Musoma in Criminal Appeal No. 20 of 2021)**

**BETWEEN**

**JUMA KITINYA OKUKU ..... APPELLANT**

**VERSUS**

**MARWA MAREGESI ..... RESPONDENT**

**JUDGMENT**

*29<sup>th</sup> March & 10<sup>th</sup> May, 2022*

**A.A. MBAGWA, J.**

This is an appeal against the decision of the District Court of Musoma sitting as the first appellate court.

The appellant was arraigned before Kukirango Primary Court on a charge of wounding contrary to section 228 of the Penal Code [Cap 16 R.E 2019].

The particulars of the offence were to the effect that on 15<sup>th</sup> November, 2020 at 10:04hrs at Baini hamlet, Nyakiswa village, Kyanyari ward within Bunda district in Mara region the appellant unlawfully wounded one **Maregesi Marwa**, the respondent on his left-hand using machete.

It was contended that on 15<sup>th</sup> November, 2020 at 0800hrs the respondent met the appellant in their farm. They started to quarrel over

the farm. In the course, the appellant approached the respondent and cut him on his left-hand by using machete and in addition uttered to the respondent that he would die like his father as he used to do injustice to people.

The appellant denied the allegations. During his defence, he testified that it was the respondent who attacked him and took away his cattle.

Upon hearing the evidence of two prosecution witnesses and two defence witnesses, the trial Primary Court found the appellant not guilty of the offence charged and consequently, acquitted him. Dissatisfied, the respondent appealed to the District Court of Musoma at Musoma (the first appellate court) before H.J Masala, RM. Upon reevaluation of the evidence tendered, the first appellate Court overturned the primary court decision as it found the appellant is guilty and convicted him with an offence of wounding contrary to section 228 of the Penal Code. Accordingly, it sentenced the appellant to three months imprisonment in default of payment of fine to the tune of Tshs. 100,000/=.

Aggrieved with the decision of the first appellate court, the appellant came to this Court armed with the following seven grounds of appeal;

1. The appellate Magistrate was biased into discrediting the PF3 which is substantial and directly proving the causation and nature of the purported injuries.
2. The appellate Magistrate was biased by substituting acquittal for conviction on matter extraneous to grounds of appeal.
3. The appellate Magistrate erred in law by putting much reliance on un-tried testimonies.
4. The appellate Magistrate erred in law by failure to assess the causation of the injuries.
5. The appellate Magistrate discarded the needed of PF3 which would have exited doubts as to the causation of purported injuries.
6. The appellate Magistrate misinterpreted appeal before him and replaced the fact thereof with revision without legal justification.
7. The appellate Magistrate grossly erred in law and fact to substitute acquittal for conviction without assigning sufficient reasons.

When this appeal was placed before me for hearing, the appellant appeared for himself whilst the respondent had the services of Mr. Baraka Makowe, learned advocate.

The appellant, being a layperson, had a little to submit. He simply prayed the court to consider the grounds of appeal and allow his appeal.

In reply, Mr. Makowe conjoined the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> ground and argued that it is not only PF3 which proves injury. He added that there was enough evidence which proved the offence committed hence absence of PF3 could not negate the conviction. The respondent's counsel expounded that the essence of PF3 was only to show the extent of injury.

With regard to the reasons of judgment, Mr. Makowe submitted that the judgment is self-explanatory particularly at page 5 last paragraph. He added that the court reasoned that PF3 would prove an injury which however was sufficiently established through other evidence.

On the 6<sup>th</sup> and 2<sup>nd</sup> ground, Mr. Makowe averred that the District Court has powers to reverse the findings of the trial Primary Court. He was of the view that the appellate Magistrate properly re-evaluated the evidence on record and was satisfied that the offence was proved. Finally, the learned counsel prayed the Court to dismiss the appeal. The appellant did not make any rejoinder.

Having heard the submissions from both parties and upon appraisal of the record and grounds of appeal, the germane question for determination of this appeal is whether first appellate Court was right to reverse the decision of the trial Primary Court.

It is a trite law that the first appellate Court has powers to re-evaluate the entire evidence in an objective manner and arrive at his own findings where necessary. See the case of **Michael Joseph vs The Republic**, Criminal Appeal No. 506 of 2016, CAT at Tabora and **Dotto Ikongo vs The Republic**, Criminal Appeal No. 6 of 2006, CAT at Dodoma. However, when the first appellate Court failed its duty, the second appellate court should wear its shoes. See the case of **Oscar Justinian Burugu vs The Republic**, Criminal Appeal No. 33 of 2017 CAT at Tabora.

The appellant contended that the first appellate Court was wrong to arrive at the findings of conviction in absence of PF3. He also lamented that the first appellate Court took in to account issues which were not among the grounds of appeal. I have keenly read the judgment of the first appellate Court but I failed to find the substance of the appellant's complaints. The first appellate Magistrate rightly re-evaluated the evidence and arrived at the findings of conviction. The first appellate Magistrate was opined that though PF3 was not tendered, there was other evidence which proved the offence. On my part, I am at one with the first appellate Magistrate that PF3 is not the only evidence to prove the offence of wounding. There was reliable oral account of the complainant's


witnesses namely, Marwa Maregesi and Richard Maregesi which established that the appellant committed the offence.

Having said so, I hold that the first appellate Court properly reevaluated the evidence and rightly found the appellant guilty of offence. Consequently, I dismiss the appeal for want of merits and uphold the decision of the first appellate Court

It is so ordered.

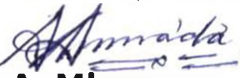
The right of appeal is explained



  
**A. A. Mbagwa**  
**JUDGE**  
**10/05/2022**

Court: Delivered in the presence of both parties this 10<sup>th</sup> day of May, 2022.



  
**A. A. Mbagwa**  
**JUDGE**  
**10/05/2022**