

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

PC CRIMINAL APPEAL NO. 4 OF 2022

***(Arising from the decision of the District Court Tarime at
Tarime in Criminal Appeal No. 58 of 2020)***

ROBERT RWANDA NYADENDA APPELLANT

VERSUS

GODFREY BINAISA RESPONDENT

JUDGMENT

A. A. MBAGWA, J.:

This is the second appeal from the decision of the District Court of Tarime sitting as the first appellate court. The background of the matter may be recounted as follows;

The appellant, Robert Rwanda Nyadenda was arraigned before the Primary Court of Riagoro within Rorya district on indictment of Criminal Trespass contrary to section 299(a) of the Penal Code. It was alleged, in the particulars of offence, that Robert Rwanda Nyadenda on 7th day of July, 2020 at 06:00hrs in the hamlet of Centre, Ngope village within the district of Rorya unlawfully entered into the land of Godfrey Binaisa, the complainant, planted tree and built a house therein.

The appellant denied the charge as such, the matter went through a full trial. The complainant, Godfrey Binaisa brought two witnesses and five exhibits to prove his case. The complainant narrated that the appellant trespassed into his land, planted trees and built a house therein without his permission. He said that he reported the matter to the hamlet chairman and later to the village chairman. Finally, he decided to institute a criminal case against the appellant. Binaisa told the trial court that the ownership of the land in dispute was conclusively determined by the Ward Tribunal for Roche via Civil case No. 48 of 2019 between the appellant and the respondent in which Godfrey Binaisa was declared the lawful owner of the land. The complainant tendered a judgment copy of the Ward Tribunal for Roche, among other exhibits, to buttress his evidence. Furthermore, the respondent testified that having entered into his land, the appellant broke his 3010 bricks and torn the canvas. In addition, the respondent's evidence was supported Nicholas Ndala (PW2) who confirmed that the appellant, Robert Rwanda invaded the respondent's land.

In rebuttal, the appellant denied the accusations. He claimed that the land in which he planted trees and built a house was his own property. He also denied to have destroyed the respondent's bricks and canvas. The appellant also called one witness namely, Salmon Otieno (DW2) to testify in his favour. Besides, the appellant requested the trial court to visit the locus in quo. As

such, on 30th July, 2020 the trial court visited the scene of crime where it met and interviewed various people.

After hearing the evidence from both parties, the trial court was satisfied with the evidence adduced by the complainant sufficiently established the offence. Consequently, it found the appellant guilty and subsequently convicted him with the offence of criminal trespass. In consequence thereof, the trial court sentenced the appellant to pay a fine of Tanzania Shillings Three Hundred Thousand (TZS 300,000/=) or to serve six months in jail in default of payment of fine. Additionally, the trial court ordered the appellant to compensate the respondent a sum of Tanzania shillings One Hundred Fifty Thousand (150,000/=) for canvas and Tanzania shillings Fifty Thousand (50,000/=) for bricks which he allegedly destroyed.

The appellant was not amused by the findings, sentence and orders made by the trial Primary Court. He thus appealed to the District Court of Tarime via Criminal Appeal No. 58 of 2020. However, his appeal was dismissed for want of merits.

Still undaunted, the appellant has knocked the doors of this court to assail the lower courts' decision. He filed a petition of appeal containing three grounds;

1. That the 1st appellate court erred both in law and facts by not considering the fact that the case was not proved beyond reasonable doubt.
2. That the 1st appellate court erred in law and fact by not considering the fact that a dispute between the parties herein was over the ownership of piece of land and not criminal in nature.
3. That the 1st appellate court erred in law and fact by not considering evidence adduced by the appellant during trial.

When the matter was called on for hearing, both parties appeared in person, unrepresented. The appellant had little to submit in support of appeal. He simply prayed the court to consider the grounds of appeal as contained in the petition and allow his appeal.

In contrast, the respondent strongly contested the appeal. He expressed that he was in full support of the decisions made by the lower courts because the land which was invaded by the appellant was declared to be his property by the Ward Tribunal for Roche. He thus prayed the court to dismiss the appeal.

I have gone through the record of appeal and the submissions by the parties. Having canvassed the three grounds of appeal, I find it convenient to condense them into one meaningful ground namely, that the prosecution case was not proved beyond reasonable doubt.

Throughout the evidence, the appellant does not dispute entering into the land nor does he deny building a house. His defence is that the land in which he built his house and planted trees belongs to him. On the adversary, the respondent states that he was declared the lawful owner of the land in dispute by the Ward Tribunal for Roche. Upon appraising the evidence including the judgment of the Ward Tribunal for Roche, it is clear that the land into which the appellant trespassed belongs to the respondent Godfrey Binaisa as such, the question of ownership is settled. It is therefore clear that the land into which the appellant planted trees and built a house is the property of the respondent. In view of the above, like the two courts below, I am of the unfeigned opinion that the respondent proved its case beyond reasonable doubt. Consequently, the appellant was rightly convicted of criminal trespass.

However, I have reservation with regard to the sentence of fine which was imposed by the trial court and confirmed by the first appellate court. Section 299 of the Penal Code under which the appellant was charged, convicted and ultimately sentenced provides;

299. Any person who-

(a) unlawfully enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of the property; person in possession of the property; or

(b) having lawfully entered into or upon the property unlawfully remains there with intent thereby to intimidate, insult or annoy the person in possession of the property or with intent to commit an offence, is guilty of criminal trespass and liable to imprisonment for three months; if the property upon which the offence is committed is any building, tent or vessel used as a human dwelling or any building used as a place of worship or as a place for the custody of property, the offender is liable to imprisonment for one year.

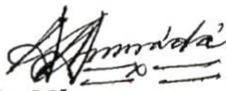
As seen above, the section does not provide for an alternative punishment of fine. It just provides a maximum sentence of three month imprisonment and in case of vessel or building for worship, dwelling or custody of property, one year imprisonment. It is a settled position of law that a court cannot impose a sentence of fine unless such sentence is clearly provided under the relevant section. See **Chande Zuberi Ngayaga & Another vs. The Republic**, Criminal Appeal No. 258 of 2020 CAT at Mtwara and **Masesi vs Republic** [1980]1 EALR. In the event, I set aside the sentence of fine in the sum of TZS 300,000/= and substitute it for conditional discharge of six months effect from the date he was found guilty and convicted. Except for the sentence of fine, the rest of orders remain undisturbed.

Consequently, save as indicated herein above, this appeal is without merits and therefore it is hereby dismissed.

It is so ordered.

The right to appeal is expressed.




A. A. Mbagwa
JUDGE
28/04/2023