

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB-REGISTRY

AT ARUSHA

PC CRIMINAL APPEAL NO. 7 OF 2023

*(Originating from Criminal Appeal no. 1/23/ Longido Originating from Criminal Case No.
105/2022 Longido Primary Court)*

ROSE D/O LIVINGSTONES.....APPELLANT

VERSUS

BABU S/O KITUME.....RESPONDENT

JUDGMENT

7th November & 16th November 2023

D.D.NDUMBARO, J.

The appellant aggrieved with the decision of the District Court of Longido originated from Namanga Primary Court which was in favour of the respondent.

The appellant was charged with the offence of breach of peace contrary to sec. 89(1)(b) of Penal Code Cap 16 R.E 2022. It was alleged that on 2/11/2022 at Buguruni area Longido District Region appellant disturbed the meeting conducted by ward office Namanga, insulting and causing noise to the members in the meeting. Despite a request made by the ward chair

to stop her from disturbing the meeting she refused. She was brought to Namanga police station and then charged before the Namanga Primary Court with the offence.

The appellant lodged an appeal before this Court with four grounds whereby grounds 3 and 4 are intertwined as: -

1. The trial court did not prove offence behind reasonable doubt;
2. that the accused/appellant did not plead guilty;
3. The trial court failed to evaluate evidence; and

Both the appellant and respondent are self-represented. because there are not presented I took charge to guide them into the submitted grounds.

The appellant narrated that drove her to the ward chair's office on a material day. That water Company dug a well/pit in front of the entrance of her house, she is running the guest house and one of her customers fell into the pit that night, therefore went to the office to complain.

On the first ground faulted there was a contradiction in the statement of the appellant witness. 1st witness testified that I interred inside the meeting while the second witness said was outside the office and the third one said I stood outside along the road. Also, 1st witness testified that I

shouted and told the members to get out of the office. The second witness testified to have said am not afraid of anyone even politician leaders. The witness statements contradict.

On the second ground, she complained of having not committed the offence, Before the trial court she entered a plea of not guilty but it was not considered

On the third and fourth grounds argued that the trial court failed to evaluate evidence, based on what he said on the first ground there was a contradiction in the evidence of the witnesses. The village chair, ward chair and ward police refused to testify in favour of her to maintain their position; when she was arrested no reasons were given for the arrest she was brought to the police.

In reply respondent faulted that, on 1st ground, it is not true that there was a contradiction of evidence, this court should referred the evidence of the primary court and district court, whereby affirmed to prove beyond doubt; there was no equivocal plea she took oath and she admitted to have committee offence.

On the third ground argued that the court evaluated evidence there after reaching a decision. Prayed to the court for justice so that people should abide the law.

After going through the evidence from the record and submission of parties, the applicant testified to have not breached the peace but the respondent disputed the testimony of three witnesses that **SM1** testified having heard noise from outside; **SM2** testified that the appellant came inside the meeting she sat for almost 5 minutes thereafter she started making noise; and **SM3** testified appellant was sitting outside the bench and started making noise.

I consider that the statement of the respondent witness varies, SM1 testified to having seen her sitting, outside SM2 said entered inside and made noises and SM3 that she sat outside on the bench, further SM1 SM2 and SM3 testified the appellant to have breached the peace. Despite their statement constituting an offence of breaching peace but not collaborating, everyone testifies different statement. This was held by the Court of Appeal of Tanzania in the case of **Lusungu Duwe v R, Criminal Appeal No. 76 of 2014** (Unreported) that;

"It is a settled principle that where there are contradictions in evidence the court is duty-bound to reasonably consider and evaluate those inconsistencies and see whether they are minor or major ones that go to the root of the matter".

Considering the cited case Court went further into analysing the proceedings of the trial court concerning evidence of SM1 SM2and SM3 as follows;

SM1

The presiding meeting for *corn men* who want to take our houses (Kikao kinachoendelea ni cha matapeli wanataka kunyanganya nyumba za watu)

SM2

CCM hold meeting over here don't they have conference room (CCM yamekuja kufanya kikao huku kwani hawana ofisi ya chama).

SM3

This is not CCM the conference hall, get out and go to kimokouwa (Ukumbi huo sio wa chama watoke wafanyie eneo lililopo kimokouwa)

Sahoba Benjuda v The Republic, Criminal Appeal No.96 of 1989, it was held that:

"Contradiction in the evidence of witnesses affects the credibility of the witness and unless the contradiction can be ignored as being minor and immaterial the court will normally not act on the evidence of such witness touching on the particular point unless it is supported by some other evidence."

Based on the above legal authorities, and considering variations of the statement of SM1 SM2 SM3 it is my considered view that the Variation cannot be ignored, there is doubt raised by the appellant.

I therefore, allow the appeal.

Parties have been informed of the right to appeal.




D.D. NDUMBARO

JUDGE