

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBIA SUB-REGISTRY

AT BUKOBIA

(PC) CRIMINAL APPEAL NO. 22 OF 2023

*(Arising from Criminal Appeal No. 6/2023 District Court of Karagwe; Originating from
Bugene Primary Court in Criminal Case No. 23/2023)*

DEUS TITO..... APPELLANT

VERSUS

JONATHAN JOHN..... RESPONDENT

JUDGMENT

14th and 22nd March, 2024

BANZI, J.:

On 14th February, 2023, the appellant was arraigned before Bugene Primary Court (the trial court) charged with the offence of malicious damage to property contrary to section 326 of the Penal Code [Cap. 16 R.E. 2022]. After a full trial, the trial court acquitted him as there was dispute of ownership on the land where the alleged offence was committed.

Dissatisfied with such decision, the respondent appealed before the District Court of Karagwe (the first appellate court), where the learned magistrate quashed the judgment of the trial court reasoning that, after the trial court had found that there was land dispute between parties, it ought to have stayed the criminal proceedings waiting for determination of land

ownership instead of determining it to its finality. Despite such finding, in his final verdict, the learned magistrate was satisfied that the case against the appellant was proved beyond reasonable doubt. According to him, existence of the land dispute is not a leeway for commission of criminal offence. Eventually, he convicted the appellant and sentenced him to six months imprisonment with an order of payment of Tshs.654,000/= as compensation for the damaged trees. Aggrieved by his conviction, sentence and order, the appellant has lodged this appeal complaining that, the first appellate court erred in law by convicting and sentencing the appellant on the offence of malicious damage to property while the question of ownership of the land had not been determined by the competent tribunal.

Briefly, the factual background leading to the conviction of the appellant reveals that, on 26th November, 2022 around morning hours, the respondent was informed that, the appellant has invaded his farm and uprooted his eucalyptus trees. In the evening, he went to the farm and found 218 trees were uprooted. The agricultural officer conducted valuation in respect of such destruction and found the total loss amounted to Tshs.654,000/=.

In his defence, the appellant denied to have uprooted the trees. He also claimed ownership over the land in dispute. His testimony reveals that, sometimes in November, 2022, he was approached by various people including his relative, Ngaiza Titus (SU3) telling him that, the respondent was in need of purchasing his land. When he refused to sell his farm, the respondent promised him to take it for free. Thereafter, the respondent started to fabricate cases against him while invading into his land. He reported to police and then instituted the land case at the land tribunal against the respondent for invasion to his land. While the land dispute was pending at the land tribunal, the respondent rushed to the trial court and instituted the criminal charge which is the basis of this appeal.

When the appeal was called for hearing, Mr. Raymond Laurent, learned counsel appeared for the appellant whereas, the respondent was represented by Mr. Aderick Runyoro, learned counsel.

Arguing in support of the appeal, Mr. Laurent submitted that, it is undoubtful that, there is land dispute between the parties whereby each party is claiming to own that land. He further submitted that, the position of the law is well settled that, where there is a dispute over ownership of land, the same ought to be determined by land courts before institution of the

criminal case as the dispute of ownership of land cannot be resolved in criminal proceedings. He buttressed his argument by citing the cases of **Silvery Nkangaa v. Raphael Albertho** [1992] TLR 110, **Ismail Bushaija v. Republic** [1991] TLR 100 and **Kusekwa Nyanza v. Christopher Mkangala** [2018] TZCA 491 TanzLII. He concluded that, since the criminal case was prosecuted to the end while the issue of ownership was not yet finally determined by the competent tribunal, whatever had transpired before the lower courts was a nullity. Thus, he prayed for this court to invoke its revisional powers and nullify the proceedings and direct the parties to channel the land dispute before competent court for determination of ownership.

On his side, Mr. Runyoro readily conceded to the appeal by stating that, as there is a land dispute between parties, the lower courts ought to have referred the matter to the land court for determination of ownership before proceeding with criminal charges. Therefore, it was wrong for both courts to proceed with hearing of the criminal charge. He prayed for this court to nullify the proceedings for both courts.

Having carefully perused the records of lower courts and having considered the submissions of learned counsel for the parties, the issue of

determination is whether the lower courts acted properly to determine the criminal case to its finality in the presence of pending dispute over ownership of land.

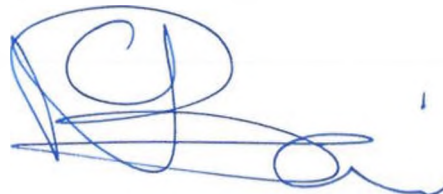
Upon perusing the records of the lower courts, it is evident that there is dispute on ownership of the land where the appellant is alleged to have destroyed the trees. Each party is claiming ownership over the same land. Although both courts acknowledged existence of land dispute between parties, the trial court decided to acquit the appellant and advised the parties to resolve their dispute through land courts while the first appellate court decided to convict the appellant on the alleged offence.

As correctly submitted by learned counsel for both sides, it is settled law that, where the dispute arises as to the ownership of land, a criminal court is not the proper forum to determine the dispute of that nature, instead, the matter has to be first resolved in civil courts before criminal charges can be instituted. This position is stated in various cases including the cited cases of **Kusekwa Nyanza v. Christopher Mkangala**, (*supra*) and **Ismail Bushaija v. Republic** (*supra*).

In the instant case, the appellant in his defence informed the trial court that, there was pending suit before the land tribunal in respect of ownership

of the disputed land. Despite such plea, the trial court proceeded to determine the criminal case to its finality and acquitted the appellant. The trial court was not supposed to proceed with the criminal charge while there was a pending land suit before the competent court over ownership of the land alleged to be invaded by the appellant. The same error was committed by the learned magistrate of the first appellate court when he convicted the appellant while knowing that there was land dispute which ought to be resolved in land courts before reaching into that stage. Accordingly, having found that the civil dispute was not yet resolved, it was improper for him to continue with determining the liability of the appellant in criminal charges. By doing so, it assumed that, the respondent was the rightful owner of the land in dispute which was not within his jurisdiction to determine.

For these reasons, the appellant's conviction cannot be allowed to stand. Thus, I allow the appeal by quashing the conviction, setting aside the sentence and compensation order meted against the appellant. The parties are advised to seek redress in land tribunal.



I. K. BANZI
JUDGE
22/03/2024

Delivered this 22nd day of March, 2024 in the presence of Mr. Victor Blasio, learned counsel holding brief of Mr. Raymond Laurent, learned counsel for the appellant, Mr. Audax V. Kaizilege, Judge's Law Assistant and Ms. Mwashabani Bundala RMA and in the absence of the respondent.



A handwritten signature in blue ink, consisting of a large, stylized capital 'B' followed by a series of loops and a horizontal line extending to the right.

I. K. BANZI
JUDGE
22/03/2024