



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

**SHINYANGA SUB REGISTRY**

**PC CRIMINAL APPEAL REF. NO. 202404015000009769**

*(Arising from the decision of District Court of Shinyanga in Criminal Appeal No. 11 of 2023, originating from Shinyanga District Primary at Kizumbi in Criminal Case No. 175 of 2022 )*

**SAID JUMA .....APPELLANT**

**VERSUS**

**JOHN PETRO KISANDU .....RESPONDENT**

**JUDGMENT**

**22<sup>nd</sup> & 31<sup>st</sup> May 2024**

**F.H. MAHIMBALI, J**

The respondent John Petro Kisandu who is also the Ward Councilor of Chibe, was sued at the trial court for an offence of threatening to kill contrary to section 89 (2) of the Pena Code, Cap 16, R.E 2022. It was alleged that on the 16<sup>th</sup> June 2022 at 13.00hrs, at Mwampalala village within Shinyanga District in Shinyanga Region, unlawfully threatened by words to kill the appellant that he would make him perish from this world, the charges which were denied by the respondent.

Upon a full trial, the trial court convicted the respondent on the allegations levelled against him on the basis that the charges were established beyond reasonable doubt as per law. Undaunted, the respondent successfully appealed to the District Court which then reversed the decision of the trial court.

The appellant has been aggrieved, and has come to this court pressing for the guilty of the respondent against him on the charges dully established. He presses this court to allow this appeal, and restore both conviction and sentence as meted out by the trial court. On this press, the appellant has preferred three grounds of appeal which in digest, all boil into single ground of appeal that the first appellate court grossly erred in failure to evaluate the adduced evidence accordingly and thus reached a wrong verdict as the charge was proved beyond reasonable doubt as per law.

It is trite law as per Primary Court Rules in evidence that where a person is accused of an offence, the complainant must prove all the facts which constitute the offence, unless the accused admits the offence and pleads guilty (See rule 1(1) of GN 22 of 1964 as amended by GN No. 66 of 1972. In essence, the cardinal principle is one in criminal law, that the charge must be established beyond reasonable doubt that the accused person

committed the charged offence, unless the accused person pleads guilty to the charge.

The issue for consideration here is whether, the charge of threatening to kill by words, were dully established a charged.

Reading the Penal Code, the term "threatening" is not defined in the Penal Code. So it must have been used in its ordinary grammatical meaning. The Court of Appeal in the case of **Khatibu Kanga vs Republic (Criminal Appeal 290 of 2008) [2011] TZCA 203 (7 October 2011)** attempted to define it by hunching the definition from the dictionary. It quoted from the Concise Oxford Dictionary (5th ed p. 1350):

*the word "threat" as "Declaration of intention to punish or hurt (law) such menace of bodily hurt or injury to reputation or property as may restrain a person's freedom of action..."*

And in BLACK'S LAW DICTIONARY, 6<sup>TM</sup> ed. P.1030;

*that term is defined as:- "A communicated intent to inflict physical or other harm on any person or property. A declaration o f intention to injure another or his property by some unlawful act..."*

From the extract above of these definitions I think that the word "threatening" as used in Section 89(2) of the Penal Code must mean a manifestation to inflict bodily or other harm on the person either by use of words or weapons. The question to ask is whether there was such a manifestation. To arrive at this decision, since there are noncurrent findings of the two lower courts, this court has to step into their shoes, and evaluate the evidence thereof, and arrive at its own decision own decision.

As per evidence in record by the appellant at the trial court, had testified, and is hereby reproduced:

*Mheshimiwa tulikua tunafuatilia mgogoro wa ardhi baada ya sisi wananchi kunyanyaswa na jeshi la wananchi, na hiyo ilikua mnamo tarehe 12.06.2022, siku hiyo nilituma maombi kupitia utaratibu wa kulipia kila hekari, mtaalamu wa ardhi aliniambia nirudi kwa Mwenyekiti. Nilirudi kwa mwenyekiti ambae alinipeleka kwa mshatakiwa amabye alininyang'anya karatasi zangu na za wananchi, alimpigia simu mwenyekiti wa zamani na kusema kwanini amenipa mimi mwehu hizo karatasi. Yule Mwenyekiti alimjibu kuwa wanafatilia haki yao, mshatkiwa aliniambia niondoke hapo atanipoteza sasa hivi. Nilishindwa*

*kuelewa atanipoteza vipi mshatakiwa ndiyo maana nashitaki kwa kutishiwa kuuliwa kwa maneno.*

As regards to SM2, he testified:

*"Hivyo hakuna aliyemtukana wala kumtishia mtu maaisha mlalamikaji"*

As regards to SM3, he testified:

*"Wakati wa Mzozo mimi sikuwepo"*

On his part, SM4:

*"Wananchi walinyang'anywa document zao na hivyo kuleta ugomvi baina ya mlalamikaji na mshtakiwa, hicho ndicho ninacho fahamu.*

SM5 testified:

*"..Sifahamu chochote, nilipokea tu wito wa kuja Mahakamani"*

SM6 on the other hand, testified that:

*" Mimi ninachofahamu, kuwa wanaugomvi"*

In consideration of this evidence, can it be firmly said that there was an offence called threatening by violence established as per law. I consider this as flimsy evidence and mockery to justice if the word: "*nitakupoteza*" literally mean to

kill. What if one is sent to jail? Or locked inside? By the way, even if uttered, there is no evidence that it was manifestly used to connote threatening to kill as per law for it to be an offence. That notwithstanding, there is no evidence that it was uttered as per negation by SM2, SM3, SM4, SM5. That the two had been in quarrels as per SM6, did not mean that there was threatening to kill. Therefore, where a complainant fails to establish all the facts which constitute the offence, is said to have failed to discharge his legal responsibility of proof of the case beyond reasonable doubt as it is the case in this appeal.

That said, the appeal is without any merit, and is hereby dismissed in its entirety for being brought without sufficient cause. The decision of the first appellate court is hereby upheld and affirmed.

DATED at SHINYANGA this 31<sup>st</sup> day of May 2024.



**F.H. Mahimbali**  
**Judge.**