

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IRINGA SUB - REGISTRY
AT IRINGA

PC CRIMINAL APPEAL NO. 5043 OF 2024

(Originated from Makambako Primary Court in Criminal Case No. 111 of 2023 And Arising from the District Court of Njombe at Njombe Criminal Appeal No. 04 of 2023)

DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT

VERSUS

HEZRON ALEX NGUVILA RESPONDENT

JUDGMENT

Date of last Order: 21/06/2024
Date of Judgement: 28/06/2024

LALTAIKA, J.

The **DIRECTOR OF PUBLIC PROSECUTIONS** (herein after the DPP) is the appellant in the present appeal. The appeal emanates from Makambako Primary Court in Njombe District Court in Criminal Case No 111 of 2023. The complaint was one **Juliana Ngimbuchi**. She complained

against **Hezron Alex Nguvila** (the Respondent herein) that the latter attacked and injured her.

The Respondent stood charged with the offence of Causing Bodily Injury c/s 241 of the Penal Code Cap 16 RE 2022. After a full trial, the Primary Court dismissed the case for lack of proof. The Respondent was set free. The complainant was dissatisfied with the decision and appealed to the District Court. The matter was taken over by the DPP who appealed in Criminal Appeal No 4 of 2023.

The District Court, in a carefully reasoned judgement, upheld the decision of the trial court. It went ahead and ruled that the only exhibit tendered in the trial Court namely the PF3 was not read out in court after it was tendered. It was the observation of the first appellate court further that the offence charged was causing bodily injury while the PF3 indicated grievous bodily harm. It also found variation between the evidence adduced and the offence charged. It dismissed the appeal. The DPP is aggrieved once again hence this second appeal. ended up supporting the decision of the PC.

Whereas the **Respondent appeared in person**, unrepresented, **Mr. Sauli Makori, learned State Attorney appeared for the DPP**. On being

asked whether he had familiarized himself with the records and was aware that this a second appeal, Mr. Makori indicated in-depth knowledge of the content of the casefile.

He indicated that essentially, he agreed with both lower courts. He emphasized that in his reasoned opinion, the case was not proved beyond reasonable doubt at the trial court. To that end, Mr. Makori argued, it was futile for him to proceed to submit on the grounds as he strongly believed that they were incapable of changing the course of events. He concluded by praying that the court proceeds to dispose of the appeal as it thinks fit in accordance with the law.

On his part, the Respondent stated that he had prepared his submission and suggested that there was no need to proceed further, as the learned lawyer had indicated that the appeal lacked merit.

He provided background information, stating that both he and the complainant lived on Mludza Street in Mlowa Ward, Makambako Township, and were neighbours. He described the complainant as a farmer and himself as a businessman dealing in construction items. He explained that their relationship had been peaceful until 2021, when he purchased land from the

complainant's sister, Hawa Mkongwa. This transaction allegedly caused jealousy and animosity from the complainant.

The Respondent claimed that the complainant feigned being invaded by demons and set fire to the farm. He asserted that a neighbour intervened to stop the fire. Subsequently, the complainant's husband arrived, and the following day they reported the incident to the police. The Respondent stated that he won the case in both the Primary Court and the District Court. He clarified that he no longer possessed the farm and had requested the return of the money from the land sale, which was one acre in size.

I have passionately considered the grounds of appeal and carefully examined the court records. There is no doubt that the Primary Court and subsequently the District Court both ruled in favour of the Respondent, dismissing the case for lack of proof beyond reasonable doubt. The District Court specifically noted discrepancies between the charge of causing bodily injury and the evidence of grievous bodily harm presented in the PF3 form. This consistent finding by two lower courts indicates a lack of substantive evidence supporting the appeal.

I must say that the District Court's judgement was carefully reasoned, highlighting procedural errors such as the failure to read out the PF3 form in court and discrepancies between the charge and evidence. These legal findings provide a solid basis for upholding the lower court's decision and dismissing the appeal.

Mr. Sauli Makori, representing the DPP, indicated thorough familiarity with the case and concurred with the findings of both lower courts. His opinion emphasized that the case was not proven beyond reasonable doubt at the trial court. This professional assessment supports the conclusion that further grounds for appeal are unlikely to alter the outcome.

Both the State Attorney and the Respondent, Hezron Alex Nguvira, expressed views that the appeal lacked merit. Mr. Makori explicitly stated that submitting further grounds would be futile, as they would not change the course of events already determined by the lower courts. This pragmatic assessment underscores the lack of substantive basis for continuing the appeal.

It goes without saying therefore that since there is no indication of new evidence or legal arguments that could substantially alter the findings

of the lower courts the appeal is amenable for outright dismissal as I hereby do. The appeal is hereby dismissed for lack of merit.

It is so ordered.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
28.06.2024**

Court

This judgement is delivered under my hand and the seal of this court this 28th day of June 2024 in the presence of Mr. Sauli Makori, learned State Attorney for the Appellant and in the absence of the Respondent.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
28.06.2024**

Court

The right to appeal to the Court of Appeal of Tanzania is fully explained.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
28.06.2024**