

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

**BUKOBA SUB - REGISTRY**

**AT BUKOBA**

**CRIMINAL APPEAL CASE NO. 23 OF 2023**

*(Originating from Criminal Appeal No. 41/2022 of Muleba District Court, arising from Criminal Case No. 288/2022 of Muleba urban Primary Court)*

**RESPICIUS ANTON.....APPELLANT**

**VERSUS**

**BERNADO RWAMASHUNJU .....1<sup>ST</sup>RESPONDENT**

**STEPHANO DAUD.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*14/03/2024 14/03/2024*  
**E. L. NGIGWANA, J.**

This is a second appeal which traces its roots from the decision of the Primary Court of Muleba Urban in Criminal Case No. 288 of 2022. In that case, the respondents were jointly charged with the offence of malicious damage to property Contrary to section 326 of the Penal Code, [Cap 16 R.E 2022].

At the trial court, it was alleged that the respondents on 13/10/2022, around 9:hours at Ruhija Village, Ward of Ijumbi, Division of Nshamba within Muleba District in Kagera Region, willfully and unlawfully slashed

and uprooted trees valued at **TZS 6,205,200/=** the property of the Appellant, Respicious Anton.

The respondents pleaded not guilty to the charge. The trial court record revealed that the prosecution side featured three (3) witnesses who testified as SM1, SM2 and SM3 while the respondents defended themselves as SU1 and SU2 and featured two witnesses who testified as SU3 and SU4.

As per trial court record, the evidence of SM2 and SM3 who are the sons of SM1 is to the effect that, on 13/10/2022, they saw the Hamlet leader (SU2) who was accompanied by many people, trespassing into the land of SM2, having trespassed into the said land; they slashed and uprooted the trees.

It was further their evidence that upon seeing such act, they rushed back home and informed their father (SM1) who came and witnessed the damage made at his farm.

The record shows that SM1 confirmed to have been informed of the destruction and then matched to the crime scene. In the trial court SM1 claimed that the land which was trespassed into belongs to him after he had inherited it from his late father Antony Alphonse.

On his side, the 1<sup>st</sup> respondent (SU1) told the trial court that on 13/10/2022, he accompanied about 50 villagers who were led by the Hamlet Chairman (SU2) to dig a water well for their consumption, and therefore, the area was cleaned first by removing shrubs and unwanted mud.

It was his evidence that, the task was performed following the resolution of the Village meeting held on 05/10/2022, and that, the land where the water well situates belongs to Ruhija Village.

The trial court shows that SU2 confirmed to have led the villagers to clean the area and dig water well in the land that belongs to Ruhija Village. SU3 who is the Chairman of Ruhija Village and SU4 confirmed that on 15/10/2022, villagers cleaned the piece of land and then, dug the water well for their consumption. It was their further evidence that the piece of land in which the water well situates belongs to Ruhija village.

The trial court record also revealed that one of the issues which were framed by the trial court was **whether there was a land dispute between the complainant and Ruhija village**. Finally, the trial court resolved this issue in the affirmative.

For easy reference, part of the trial court Judgment read;

*"Kimsingi baada ya kupitia kwa kina maelezo ya pande zote mbili ni wazi kuwa upo mgogoro wa eneo hilo, halijulikani ni mali ya nani kwani kwa upande wa utetezi wanadai ni mali ya kijiji chao Ruhija, Kitongoji cha Bujenjeka lakini mlalamikaji ana dai kuwa aririthi eneo hilo kutoka kwa Baba yake ambaye ni marehemu lakini kwenye kesi hii hakuna ushahidi kama mlalamikaji alifungua kesi ya mirathi na ikaonekana kuwa marehemu Baba yake alikuwa anamiliki mali hiyo na ikagawiwa kisheria na hakuna ushahidi kama mgogoro huu umekwisha fikishwa kwenye vyombo vya kutatua migogoro ya ardhi kwani ni matakwa ya kisheria kwamba kama kuna ubishani wa umiliki wa kitu lazima suala hilo litatuliwe kwenye shauri la madai tazama shauri la **Nkanga v. R** (1992) TLR".*

Finally, the trial court ruled out that under such circumstances, it cannot be said that the case of malicious damage to property has been proved beyond reasonable doubt since each party is claiming interest over the said land. Consequently, the respondents were acquitted.

Aggrieved by the trial court decision, the appellant appealed to the District court of Muleba through Criminal Appeal No. 41 of 2022, but the same ended up being dismissed for want of merit.

Still aggrieved, the appellant lodged this appeal armed with six (6) grounds of appeal which were drawn by Mr. Pontian Mujuni Dionysius, learned advocate. However, during the hearing of this appeal, the appellant abandoned the rest of the grounds and argued the 2<sup>nd</sup> ground only which he rephrased as follows:-

*"That the 1<sup>st</sup> appellate court erred in law and fact to confirm the decision of the primary court without considering that the case against the respondents was proved beyond reasonable doubt"*

At the hearing of this appeal, parties appeared in person, unrepresented. Taking the floor, the appellant submitted that the respondents trespassed into his land and destroyed his tress without any legal justification. He added that he acquired the land from his later father Antony Alphonse. He added that, he was shocked when he received a summons requiring him to attend the Ijumbi Ward Tribunal following the complaint lodged by Ruhija Council on 17/10/2022 against him that he had trespassed into the village land. He ended up his submission saying the respondents ought to have been convicted since the offence was proved beyond doubt. He prayed to the court to convict the respondents accordingly and order them to pay **TZS 6,205,200/=** being the value of the destructed trees.

On his side, the 1<sup>st</sup> respondent submitted that, they have entered the Village Land and cleaned it by removing shrubs and then, villagers dug the water well for their consumption. He added that, they never trespassed and destroyed trees in the appellant's land. He ended up his submission urging the court to dismiss this appeal for want of merit.

The 2<sup>nd</sup> respondent submitted that the concurrent decisions of the lower courts are very proper because they entered into the village land and not the land of the appellant. He ended up his submission praying that this appeal be dismissed for being devoid of merit.

Having gone through the lower court records, the ground of appeal by the appellant and submissions by the parties, the issue for determination is whether this appeal is meritorious.

I am alive of the cherished principle that a second appellate court is not required to interfere with the concurrent findings of facts of the two courts below except in circumstances where the Court is of the opinion that there was either misapprehension or misdirection of evidence occasioning injustice. See. **Ludovic Sebastian versus Republic**, Criminal Appeal No. 318 of 2009 (unreported).

It is trite that where the case involves matters of trespass and malicious damage to property into that land whose ownership is yet not determined the charge of criminal trespass and/or malicious damage to property, cannot stand. See **S. Nkangaa v. R** [1992] TLR 11, **Simon Mapurisa verswus Gasper Mahuya**, Criminal Appeal No.221 of 2006, CAT (unreported), and **DPP versus Malimi Sandama & 3 others**, Criminal Appeal No. 92 of 2018 CAT (unreported).

As revealed by the trial court records, the judgments of the lower courts and submissions by the parties, it is apparent that there were two issues before the trial court which are civil issues based and criminal issues based on trespass and destruction of the trees alleged to belong to the appellant.

Being guided by the herein above cited Court of Appeal decisions, the concurrent decisions of the lower courts were very right to the effect that, ownership of the land in dispute between the appellant and Ruhija Village Council must be determined first.

It is my view from the foregoing, that I find no justification to fault the concurrent positions taken by the lower courts in this matter. I find no

misapprehension of evidence or miscarriage of justice, nor do I see a violation of some principle of law or procedure.

In the upshot, I see no merit in the appeal and I dismiss it. I make no order as to costs. Order accordingly.

Dated at Bukoba this 14<sup>th</sup> day of March, 2024.




E. L. Ngigwana

Judge

14/03/2024

Judgment delivered this 14<sup>th</sup> day of March 2024 in the presence of the appellant and respondents in person, Hon. E. M.Kamaleki, and Ms. Queen Koba, B/C.



E. L. Ngigwana

Judge

14/03/2024