

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

(APPELATE JURISDICTION)

CRIMINAL APPEAL NO. 47 OF 2017

(Arising from Maswa District Court in Criminal Case No. 73 of 2016 (T.J. Marwa, RM))

MADAHA MILINGWA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

Date of Last Order: 17.10.2018
Date of Judgment: 07.12.2018

JUDGMENT

V.L. MAKANI, J

MADAHA MILINGWA is the appellant in this appeal. He is appealing against the decision of Maswa District Court in Criminal Case No. 73 of 2016 (T.J. Marwa RM). The appellant was charged of disobedience of lawful order contrary to section 124 of the Penal Code CAP 16 RE 2002 (the **Penal Code**) and was convicted and sentenced to two years imprisonment. The appellant is appealing against the conviction and sentence.

According to the particulars of offence in the charge sheet, the appellant on 13/06/2016 at about 16:00hrs at Kinamwigulu village within Maswa District in Simiyu Region disobeyed the order given to

him by the District Land and Housing Tribunal (the **Tribunal**) to vacate the suit land of one Bala s/o Jingo.

At the trial court the prosecution had three witnesses and one exhibit. The appellant (then accused) had one witness and tendered six exhibits. The trial court found that the prosecution had proved its case beyond reasonable doubt and the appellant was convicted and sentenced as charged.

Being dissatisfied with the decision of the trial court the appellant filed a Memorandum of Appeal with five grounds of appeal which are reproduced herein below as follows:

- 1. That the trial District Court grossly erred on point of law and facts in holding that the prosecution proved the case beyond all reasonable doubts.*
- 2. That the trial District Court erred on both point of law and facts in failing to hold that no lawful order existed worth to be obeyed by the appellant.*
- 3. That the trial District Court erred on point of law and facts in failing to detect and appreciate that one Ilanga, the Honourable Chairman of the District Land and Housing Tribunal of Maswa at Maswa had no jurisdiction whatsoever to overrule the decision of one Sululu, Honourable Chairman of the District Land and Housing Tribunal now stationed at Singida.*
- 4. That the trial District Court erred on both point of law and facts in failing to hold that the appellant through the defence exhibits tendered and marked Exhibits D1 to D6 inclusive had castled (sic) doubts upon the prosecution case.*

5. That the trial District Court grossly erred on point of law and facts in failing to hold that cause of action in respect of the criminal case had not accrued as the ownership dispute of the disputed land was still pending before the High Court of the United Republic of Tanzania, at Shinyanga.

At the hearing of the appeal the appellant appeared in person, and Mr. Enoch Kigoryo, learned State Attorney represented the respondent Republic. At the time the appeal was heard the appellant had served his sentence.

The appellant said the District Court erred in deciding that he disobeyed the court's order because he was not given a summons to that effect. He said the Chairman was not supposed to give an order over another order as execution order had already been given and adhered to. He said he gave sufficient exhibits but still the trial court did not consider the said exhibits in respect of the order of E.F. Sululu (the previous Chairman). He prayed to adopt the grounds of appeal and that the appeal be allowed and the decision of the trial court be nullified because there was an ongoing appeal at the High Court while the Criminal Case was ongoing.

Mr. Kigoryo did not support the appeal. He said the decision of the trial court was proper. He said the main ground in that case was proved beyond reasonable doubt. He said the appellant was charged with disobedience of a lawful order by virtue of section 124 of the

Penal Code, and the main element to prove was whether or not there was a lawful order. Mr. Kigoryo said the evidence before the court proved that there was a lawful order to execute the decision of the Tribunal (Exhibit P1). He said the appellant consented that there was such order and he tendered it as Exhibit D2 that was duly admitted in evidence. He said even the appellant himself proved the element of lawful order and therefore the first, second and third grounds did not have merit.

As for the exhibits submitted by the appellant, Mr. Kigoryo said these were mere correspondence and were not orders of the court.

As for the last ground that there was a pending appeal at the High Court, Mr. Kigoryo said this was not a reason for the appellant to disobey the order of the court whose execution was complied with according to the law. He concluded by stating that the case against the appellant was proved beyond doubt and the appellant was properly convicted and sentenced because according to the evidence he knew there was an order of the court. He prayed for dismissal of the appeal.

In rejoinder the appellant insisted that he did not disobey the lawful order of the court, as it was the court that declared ownership of the land vide Land Application No. 67 of 2014 and ordered execution thereof. He prayed for the appeal to be allowed.

In this appeal the main issue for determination is whether or not this appeal has merit. I will consider the grounds of appeal generally.

Section 124 of the Penal Code states:

"A person who disobeys any order, warrant or command duly made, issued or given by a court, an officer or person acting in any public capacity and duly authorised in that behalf, commits an offence and is liable, unless any other penalty or mode or proceeding is expressly prescribed in respect of that disobedience, to imprisonment for two years"

In the case of **John Mwansasu vs. Republic, Criminal Revision Case No. 8 of 2000 (HC-Dar es Salaam)** Manento, JK (as he then was stated:

"A courts Order is lawful unless it is invalidated by another superior order, and therefore it must be obeyed. A contrary view will have the undesired effect of creating an impasse in the conduct of the trials. The cardinal aim of reacting the offence of contempt of court is to arrest all conducts which are aimed at or reasonably feared to be aimed at interfering with proper administration of justice."

In the very same case the court cited the case of **Yasini Mikwanga vs. Republic [1984] TLR 10** where the court quoted with approval an English case of **AG vs. Butterworth (1963)1 G.B. 696** where Lord Donovan had this to say:

"The question to be decided ...in all cases of alleged contempt of court, is whether the action complained of

is calculated to interfere with the proper administration of justice. There is more than one of so interfering."

Now, can the action by the appellant be interpreted as disobedience of a lawful order of the court to amount to interfering with proper administration of the justice? The record is clear that the Tribunal ordered the appellant to vacate the suit land and demolish the mud houses that he had built thereon (Exhibit P1). The appellant resisted the said order and the refusal by the appellant led the Tribunal to demolish the said mud houses. However, despite the demolition of the said mud houses by the Tribunal, the appellant proceeded to build new mud houses on the said suit land. When he was asked why he did not obey to the order of the Tribunal he said the land was allocated to him according to Land Application No. 67 of 2014, however, the said application was between Bala Jingo and Zenze Mabilika. It should be noted that the appellant was not a party to that application, and during trial which is subject of this appeal, the said Zenze Mabilika (DW2) did not say that he gave land to the appellant according to the order of the Tribunal directing that the land be allocated to Bala Jingo and Zenze Mabilika.

Further DW2 said there was an appeal before the High Court at Shinyanga, but there was no order from the High Court that was availed to the trial court to invalidate the order of the Tribunal. As correctly said by the trial magistrate, there was no order to set aside the Tribunal's order and so it was still valid and existing. It is

apparent that the behavior of the appellant is nothing else but an act calculated to interfere with proper administration of justice. If the appellant were not satisfied with the order of the Tribunal he would have followed proper procedures of the law to invalidate the order of the Tribunal. The court is obliged to supervise the execution of its orders otherwise the court would be equated to a toothless bulldog which could bark without biting. The trial magistrate acted properly to see to it that there is proper administration of courts orders.

For the above reasons, I do not find any fault in the decision of the trial court in Criminal Case No. 73 of 2016 and I find the appeal without merit and it is hereby dismissed in its entirety.

It is so ordered.

