

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[MOROGORO SUB-REGISTRY]
AT MOROGORO**

PC CRIMINAL APPEAL NO. 10 OF 2023

(Arising from Criminal Appeal No. 04 of 2023, in the District Court of Kilombero,
Originating from Criminal No 102 of 2022 in the Primary Court of Mngeta)

YOHANA SIWALE..... APPELLANT

VERSUS

MADUHU LUGOME RESPONDENT

JUDGEMENT

05/03/2024 & 21/03/2024

KINYAKA, J.:

At the primary court of Mngeta in Kilombero District, the appellant Yohana Siwale vide Criminal Case No. 102 of 2022 prosecuted the respondent herein for theft contrary to section 265 of the Penal Code, Cap 16, R.E. 2022. Having heard both parties, the trial court convicted and sentenced the respondent to serve a six months imprisonment in jail. The court further ordered the respondent to either return to the appellant the allegedly stolen 23 sacks of paddy or pay the market price of the same.

Dissatisfied with the decision of the trial court, the respondent channelled an appeal to the District Court of Kilombero at Ifakara. The District Court

allowed the appeal and overturned the decision of the trial court on the ground that it had no jurisdiction to entertain the matter before it. In arriving at the decision, the District Court found that there was a serious dispute of ownership of the stolen property which had to be established first before channeling the theft allegations against the respondent herein.

The appellant was aggrieved by the decision of the District Court and preferred the present appeal faulting the decision of the first appellate court on the following grounds: -

1. That the first Honourable appellate court erred in law in wrongly considering the preferred grounds of appeal before it and genderized its findings based on the issues for determination in the trial court instead of arguments made by the parties in relation to the grounds of appeal set out in the petition in the first appellate court;
2. That the honourable appellate court erred in law in failing to uphold and hold that the trial court was vested with the jurisdiction in entertaining the criminal matter involving theft and it was not a land dispute on land ownership of paddy farms as it did wrongly held;

6

3. That the first honourable appellate court erred in law in failing to re-evaluate the entire evidence on record in an objective manner and reach at its own findings of fact as a result arrived at erroneous decision;
4. That the first honourable court erred in law as it failed to provide analysis and attach necessary evidential values and weights testified evidences in the trial court by the appellant;
5. That, the first honourable appellate court erred in law in exercise of its vested jurisdiction by not holding that the appellant proved his case on the strict proof beyond reasonable doubts, consequently, erroneously quashed both conviction and sentence and order the respondent to be released immediately; and
6. That, on the 18th day of April, 2023, the judgment was delivered and extracted, but the appellant was supplied with the said judgement on 24th April 2023, thus the petitioner is well within the prescribed time for appeal. The petition is therefore is within time.

On 5/03/2024, when the appeal was placed before me for hearing, both parties enjoyed legal representation. While the appellant was represented by Mr. Mngumi Samadani, learned Advocate who was holding brief for Advocate Alex Mashamba Balomi with instruction to proceed with the hearing



of the appeal, the respondent was represented by Mr. Funuki Sikujua, learned advocate. The appeal was canvassed orally.

As the impugned decision of the district court was premised on a point of law to the effect that the trial court lacked jurisdiction to try the matter, I implored the parties to submit solely for and against the second ground of appeal which covered the same.

In his submissions, the appellant's learned advocate maintained that the trial court was vested with criminal jurisdiction. He elaborated that the jurisdiction of the primary court is derived from section 18(1) of the Magistrates Court Act Cap. 11 R.E. 2019 where in the 1st Schedule, the Primary Court is conferred with jurisdiction over the offence of theft under section 265 of the Penal Code.

He said, the central issue at the trial court was theft of paddy by the respondent who was correctly found guilty by the trial court. In his views, there was no land matter about ownership, contrary to the situation in the case of **Japhet Evod Mapunda and 2 Others v. Lukresia Ciprian Mapunda, PC Criminal Appeal No. 02/2021**, where there was the issue of trespass of land whose source was land ownership. Mr Samadani pressed

that as there was no land dispute, the proper forum with jurisdiction to hear theft offence of paddy was the primary court.

As the ground of jurisdiction is sufficient to dispose of the present appeal, the appellant's counsel prayed that the appeal be allowed and the decision of the primary court be confirmed.

Responding to the submissions by the Appellant, the respondent's counsel contended that the proceedings of the trial court speak loudly that there was a dispute over ownership of land on which the said paddy was planted. He argued, that being the case, the trial court was required to desist from entertaining a criminal case and advise the parties to refer the dispute over ownership of land to civil courts in order to resolve the issue of ownership instead of a criminal case whose determination led to unfair decision against the respondent. He referred the court to the decision of the Court of Appeal in the case **of DPP v. Malimi Sendama & Others, Criminal Appeal No. 92 of 2018** reported on TANZLII, where it was categorically held that where there is a dispute regarding boundaries of adjacent private land or ownership of a part or whole of adjacent land, such dispute is resolvable in civil courts.



Relying on the principles spelled out in the case of **Japhet Evod Mapunda** (supra) on page 9 of the judgement and the provision of section 167(2) of the Land Act, Mr. Sikujua argued that the appellant was supposed to resort to the civil or land courts which require all issues concerning land to be dealt with by civil courts. He urged the Court to uphold the decision of the first appellate court.

In his rejoinder, Mr. Samadani reiterated his submissions in chief. He added that the respondent admits that the bone of contention before the primary court was theft of paddy and not ownership of land. He added further that the case cited by the respondent was not supplied to them and therefore prayed that the submissions relying on the case be ignored.

Having examined the submissions by the learned advocates for the parties, the issue for consideration before me is whether the primary court of Mngeta had jurisdiction to hear and determine Criminal Case No. 102 of 2023.

I have keenly made a perusal on the lower court's records. It is vividly clear and undisputed that at the trial court, the appellant's claim was theft of 12 sacks of paddy allegedly stolen by the respondent that was cultivated on the land owned by Mr. Lawrence Shangaruka (DW2). The fact is evidenced by



the typed proceedings in the testimonies of the appellant (PW1) on page 4, Lukas Moto (PW3) on page 10, Charles Mipawo (PW4) on page 12, Maduhu Lugohe (DWI) on page 17 and Lawrence Shangaruka (DW2) on page 20.

It is further on record that the respondent and other persons who were not parties at the trial, harvested the alleged stolen paddy under the instruction of DW2, the alleged owner of the farm. It was testified further that the respondent believed that the paddy belong to DW2, one Lawrence George Shangaluka based on the information supplied to him by one, Ndama and Matanga who were supervising DW2's farmland.

Observing as such, this appeal need not delay me much as I am convinced that the argument advanced by the respondent's counsel both at the first appellate court and this court that there was a land dispute is a total misconception. My reasons for landing in such a conclusion are not far to fetch. In my understanding, a land dispute is the one involving a claim on a right of ownership over a land. The broader view of the same was made by this court in the case of **Baddi Twaha Ally v. CRDB Bank Plc & Another, Land Case No. 175 of 2023**, High Court of Tanzania at Dar es Salaam (unreported), where upon being prompted to deliberate as to whether the matter before it was a land dispute, the court underlined that:-

"In order to properly determine whether or not this court has jurisdiction over the matter at hand, first we must resolve the question as to what constitute a land dispute. A "land dispute" involves conflicting claims to rights in land by two or more parties, focused on a particular piece of land, which can be addressed within the existing legal framework. The parties to a land dispute must have conflicting interests/claims on either ownership, usage or possession of land."

Reading the above authority in line with what transpired at the trial court, I strongly hold that there was no land dispute capable of ousting the jurisdiction of the trial court in determining a criminal charge laid before it. I so hold as from what I see in my reading of the trial court proceedings, the dispute was based on the ownership of the paddy. Undeniably, nowhere in the proceedings of the trial court had it been indicated that the parties locked horns on the ownership, usage or possession of land on which the paddy was cultivated. In the circumstance, it was undesirable for the court to have advised the parties to seek a determination of the ownership of land through a civil suit.

On the contrary, both parties were at one that the land on which the paddy was cultivated on belonged to DW2. What I could have agreed with Mr.

Sikujua, learned advocate for the respondent, is that in proving the offence of theft, the trial court was duty bound to establish as to who was the lawful owner of the stolen properties, which in this case, the paddy.

For the foregoing reasons, it is my finding that the first appellate court erred in allowing the respondent's appeal only on the ground of lack of jurisdiction of the trial court. From what I have endeavoured to demonstrate herein above, the trial primary court had requisite jurisdiction to hear and determine the allegations of theft against the respondent in Criminal Case No. 102 of 2022.

As a way forward, this appeal is allowed. As this court is the second appellate court, it cannot determine matters that touch the merit of the case in respect of the other grounds of the appeal taken before the first appellate court, as they were not determined on merit. That said, I hereby quash and set aside the decision of the District Court of Kilombero in Criminal Appeal No. 4 of 2023 with an order that the file be remitted to the first appellate court for determination of the remaining grounds of appeal revolving around evaluation of evidence adduced at the trial court, and whether or not the offence of theft was proved on the required standard. I order each party to bear his own costs.



It is so ordered.

Right of appeal fully explained.

DATED at **MOROGORO** this 21st day of March 2024.

H.A. Kinyaka

SGD: H.A. KINYAKA

JUDGE

21/03/2024

