

TANZANIA / JUDGMENT

19940330 TZHC Dodoma

COURT
TZHCDECIDED
30 March 1994

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

. -...! ,/, IN 'THE IIIGII cou;~T OF TANZANIA AT~ · .AJ:PEU, -TD JV:~.JSDICTION
C:,;JJ,ITN.AI, ..ll'F:JAL HO. 122. OF 1993 (Frm the dee'i'li02:l o:f -the »i~!G>'I ~ - - c£ ~rcida, District
at Singida In Criminal Cs.se N°. 239 r;:f. 1992) - :Be.:fox-e Fo~• ,_ ~sen.git Esq., Dist:d~ot ~ t e .
~JAN I s.l.D) • o, .. o • " • J.PPIXLLa'lT versus T.El]J :-:~]F(J)]LIC ... o • " • o ,. ..1:~1...sfQNDDN'I'
JUDGNENT ~ c,p1>ellant .Atmm2.11i s/o S2.iq. -was charged z,nd convicted #,f two offel'lees by
~e 3inc;1..c:w. l).istr:tct Cou:t>t.. ·Th,Q 1'11.'~t. O<llai- .ro,s. ~ -0:i.. "iminal,. trespass c/s. 259 (1))
of the Penr:J. Coclo Co,p. 16, 1-,hile the 60QO?ld c.ount was of Lla.licieU4 damc,c~ to prope:l'ty c/
s 326 (1) of the :F ena.l Code Ca,p. 16. Ile was sentenced ::, ·Shs.10,wo/= fine m_, 12 months
io1_.,:i:'isonraent in :ces:peot ~f each COL.liliio Us;ng the ~ervioe of a11. advocate· Mr. ll'Ibezi,
ho is now appealing t~ this f ~ . The.,lteyu.7:=lic ":'lcl,S. l;ep1:~ 2q a. St....te A t ~ y Y° .l:i:'e
Mwambe. W't.12/° hs.i]I>ened was thz;t the;:oe was a di.spu"t-4 ~ ~ ovmerehip of a piece of land.
between the c.onplai.nc.nt Yu.suf'u s/ o Ally ('.PrT .1) 2nd the appellant. Each 11c~s cleting to be
the ~,mer of t..11.e piece of land in dispute. In fact the ap:vell[nt adduced evidence 2,t ,the tria].
to the effect that between 1958 19(j~ 'the:re was s, case in ociurt in respect 6f the piece· of
la.nd in dispute bet-ween the ~.ppellmt 1 s cra.nd.fetth~ named Ngoll6 and another person 9 md
Mr· !150110 won. Since then that land has been the prope:rv of the,appellant's clan. ~c:r: on
1/1/1991 ,the c.j_)yellant believine tJ.10 lE:.nd in dispute 'rhc,t becani:D the sl:~,~ j~ct r:::atter o:~
the two offcl1.~'!.0S of orii:~inal tespa.ss and nalicious dan2,Ce •;,) :7:co;porty· 1':o-lcl t~.c:,t on
~ie evid.e:~\oe avo.ilable on ;;~aco:~d, tle lc;:c~ in dispute 1)(~101'1:~s to t:::le complain2.11t
ii1.d so the a.ppelhnt wc:i,::: s, c:~1:~.Dinal · tresra.s~sor ,.~nd 1:ns dso e;uil ty of 1:~1.c:J.icious
damage to prol'erty" 2 Ti.we: md G,C,all1. th:i:s 001,u-t has reiterated that rib.en tb.e.acou.sed, _
in essence puts u;p a. ~~1~. a cla.i.m of .rif;llt, tb.at would be a ~ooplete defence to the cha;t~g-e
of ;rimina.l. i.i.~cspass" T'..ierefore rihere a person exercises a right 'iilu..t ho conside:~.s to be
his 9 though. m,istakenly so, he cannot he said to ho;ve tl: ~ intention necessa:ry to bring his act
id thin the offence of. c:d.mjnaJ. i:respas - see the decision l,y this court in L.yanga Vrso Rs
(1~.r) Ilc-CoD no 305 enc'~. the case f'f Re Vrso I,iiohaoed s/e .§a.1.ehe: I 1979 L.;ti:!!...!-?~Oe 32..
fel:- s, 9 o:f the P~~ Cr,d~ _gap. 16 puts ::U :lu.i le t~learly ;_a,~t a· bonafide irrt~fthe accused is
asserti.lJ.e 2, claim ~f right to property that belong-0d to him is a complete defence to the charge
of criminal 'Q:'0Sj:~1SSo · It was not with.in the province of the criminal nov.r't to determi.L3 ~.o
~i.v ·1bo is the owner of the land in disoute., that job should hc:~ve l , , :1 tra.."ls:fer:i.'cd to a civil_
court. T',le tri, : Llagistrate sl'ould '.1~ve acquitted the a;_ppolli.nt on "both, counts 8..1'1d 2.c1
1Lce the com:plcinwt to file a civil suit to determine as to vz110 is an ht': "ul 01mer of tb.e l;:::nc:..

in dispute., 7Jlat observation uas c,ivcn 'by Sddi. 'T\$ (as he then lms) t,s fElJ!' bc:ck as 1968 in t,.'½.e cs.se of .?aj.di sj o_ Jure£._-,~ ~ .. :a~ (1968) E .. C.Dn., 158 1-lhere he st2,ted that in a c.1s0 o:f c:i!'imincl. t:, spass 1 if a dir-,rte arises as to the mmcrship of the sb.ould adv.ice the , NJplainant to file 2, civil ,:,ction to. determine the question of 0·1me:rSJ. ~-:P nf 12.ndo I ho:pe the lez:-rned trial me,[,"istx'a.te will tike note of that ": ,_',:,c:t.;:::,t O:x,,L·v _;tion., In the e~ c:nt this appeal succe0ds, I allow the a:::_1p0a.l. The conviction is quasb: ~ 811d sentence is set 2,side., The fine w:uch was paid b the appellant s; 0 : .J.d 1Je :..•ef'u.ndecL to t::..10 said appellant., 1 O:,;der accordninf;ly. A ttol'rloy foi· tte _,

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE [https://media.tanzlii.org/media/judgment/344828/
source_file/83fa78386a8bdd6d/19940330_TZHC_Dodoma.pdf](https://media.tanzlii.org/media/judgment/344828/source_file/83fa78386a8bdd6d/19940330_TZHC_Dodoma.pdf)

CASE PAGE [https://chat.esheria.ai/case-law/tanzania/amani-so-saig-v-the-republic-criminaltrespass-
tzhc-1994](https://chat.esheria.ai/case-law/tanzania/amani-so-saig-v-the-republic-criminaltrespass-tzhc-1994)

Prepared on 14 October 2026 · Esheria