

TANZANIA / JUDGMENT

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- IN THE HIGH COURT OF TANZANIA DAR ES SALAAM DISTRICT REGISTRY. AT DAR ES SALAAM CRIMINAL APPEAL NO 178 OF 2015 (From the Decision of Kisarawe District Court in Criminal Case No 80/2014) JACKSON RWEHUMBIZA & OTHERS APPELLANT VERSUS THE REPUBLIC RESPONDENT

JUDGMENT

MKASIMONGWA, J. According to the Judgment of Kisarawe District Court in Criminal Case No. 80 of 2014, JACKSON RWEHUMBIZA, GRACE EMANUEL, MATHIAS JOSEPH, VENANCE KAVISHE and IBRAHIM MBAWALA the 1st, 2nd, 3rd 4th and 5th Accused respectively stood before the court charged with two counts under the Forest Act namely: 1 st Count: Unlawful entering in the Forest Reserve contrary to Section 84 (1) (a) of the Forest Act. 2 nd Count: Enter and conducting prohibited Activities within Forest Reserve Contrary to Section 84(1) (a), (b) and (2) read together with Section 26 of the Forest Act. Out of the five accused persons, the 1st, 2nd and 4th Accused persons were found guilty of all offences under the two counts. They were therefore convicted and sentenced to six months imprisonment for each count. The sentences were ordered to run consecutively. The appellants are aggrieved by the decision of the trial court hence this appeal in which they have six grounds as shown on the P~tition of appeal. Based on them the Appellants pray the court that:-

1. This appeal be allowed and the decision of the District court be quashed and set aside.
2. Any other relief that this Honourable Court shall deem fit and just to grant. In short the prosecution's case that led to the conviction of the Appellants is as that sometime in 1964 there were put, vide Government Notice No. 306 of 1954 the boundaries of Kazimzumbwi Forest Reserve which covers an approximate area of 12,015 acres. Upon a dispute, as to the demarcation of the land, that arose between those recognized by the Lands, Housing and Human Settlement Development and the Natural Resources and Tourism Ministries of the United Republic of Tanzania, on 14th of April, 2013 the Prime Minister's Office wrote to the Respective Minister's for Regional Administration and Local Authorities, Lands, Housing Human and Settlement Development and Natural resources and Tourism directing for recognition and respect of Kazimzumbwi Forest Reserve boundaries as set by GN. 306 of 1954. The Appellants and other people did enter into the Forest Reserve in which they established residences and farming including cattle grazing. On the 18th of December, 2014,

acting for the Regional Commissioner for Coast Region, the Kisarawe District 2 HI \ Commissioner held a public meeting in -which, he reiterated to the people the boundaries of the Kasimzumbwi Forest Reserve as provided for by the 1954 GN. He eventually provided for two days for all who have trespassed into the Forest Reserve to vacate. On 22 nd of December, 2014 there was held an operation evicting trespassers from the land in which process the appellants were arrested and charged in court where they were convicted and sentenced as shown above. When the matter came up for hearing before me, there appeared the appellants in person whereas the Respondent R~public was represented by Miss Neema Mbwana, learned State Attorney. When was arguing the ground of appeal, the 1st Appellant contended that the tendered documentary evidence shows that there was a dispute over the boundaries of the Forest Reserve in question from which the prime Minister's Office directed for setting for permanent boundaries so that the frequent contents by citizens be permanently resolved. As there was a dispute, the same ought to have been brought before the land court for determination. The 1st Appellant also contended that sometime the Ministry of Lands, Housing and Human Settlement Development issued a Surveyor's Report of Verification in respect of the Land in question which was printed in a Newspaper. The court declined admitting the Newspaper in evidence. As to the documentary evidence the 1st Appellant added that instead of taking into account the documentary evidence it only considered the agricultural activities that were being held in the forest. He submitted that the activities were never being taken in the Reserved Forest. That is why even when the court visited the scene of crime, PW2 could not identify to it 3 the beacons alleged to be demarcating the land. The land on which he was found is his property. He had purchased it in a transaction which was reduced in writing a copy of which the court without any justification denied accepting in evidence. The first appellant prays the court that it allows the Appeal. In their submission the 2nd and 3rd Appellants subscribed to what was submitted by the 1st Appellant. The 3rd Appellant added that on the date the court had visited the scene of crime he was sick and could not make it to the court. He was therefore denied justice in the matter. In response to the Appeal Miss Neema Mbwana supports the conviction and the sentence imposed by the trial court. In respect of the 1st and 2nd Grounds of Appeal, Miss Neema Mbwana submitted jointly to the effect that the land in question is clearly demarcated. There is no dispute as to the ownership of the land and the dispute as to the boundaries of the land was solved by the Prime Minister's Office. Whether or not the land was sold to the 1st Appellant is immaterial. Even if the court could have admitted the Sale Agreement in evidence, that could not have ,r-· changed the findings of the court in this matter. On the evidence given by the prosecution witness the court was justified to enter the conviction. The appeal therefore lacks merit and the same should be dismissed. By way of rejoinder the 1st appellant submitted that according to the GN there are 1-167 beacons demarcating the Forest Reserve. At the scene of crime the prosecution witness (PW.4) did not show any of the beacons 4 according to the GN. As such the prosecution failed to establish their case beyond reasonable doubt. That is all from the parties. Before embarking into the merits of the appeal, I find it material worth to comment on the charges and the manner they were charged in this matter. As it has been shown the

Accused person were charged under Section 84 (1) (a) of the Forest Acts for the first count and Section 84 (1) (a) (b) and (2) of the Act for the second count. Part of Section 84 (1) of the Forest Act reads as follows:- "84 (1) Any person who, without any existing right, or permit or other lawful permit under this at within a forest reserve

- (a) Enters into the forest reserve
- (b) Performs any act which is prohibited by Section 26 or which is prohibited by a forest Management or other agreement. (c) (d) (e) Shall be guilty of an offence against this Act.
- (2) If any person, without lawful excuse, the burden of proof of which shall be on him is found within or in the vicinity of any forest reserve or has in his possession any implement for cutting, taking, working or rendering any forest produce, shall be guilty of an offence against this Act (3) 5 (4)
- (5) Any person committing an offence under this section shall be guilty of an offence and upon conviction liable to a fine of not less than thirty thousand shillings and not exceeding one Million shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment" MY. understanding to the provisions of this section is that each paragraph of Sub-Section 1 of Section 84 of the Forest Act, establishes one and independent offence. Again Subsection 2 of the section established and independent offence. That being the case, when in the second count, the prosecution charged the accused person under Section 84 (1) (a), (b) and (2) as shown essentially the accused was charged with three separate counts in one count. The three counts are:-
 - (i) Unlawful Entering into a Forest Reserve contrary ,to Section 84 (1) (a) of the Act. (ii) Performing prohibited acts in the Forest Reserve contrary to Section 84 (1) (b) of the Forest Act and (iii) Being in possession within the Forest Reserve of any implement for cutting, taking working or rendering any forest produce contrary to Section 84 (2) of the Forest Act. Evidently the charge sheet was bad n law for duplicity. The charge sheet contravened the provisions of Section 132 of the Criminal Procedure Act [Cap. 20 R.E 2002] which is couched in the following words. 6 "Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged with, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged' In respect of the second count, the prosecution alleged against the accused person that:- "... on 22'd day of December, 2014 at about 10. 00 hrs at Kazimzumbwi Forest Reserve did found cut down and fall trees remove wild plants and cultivate and erected building without valid permits" I am convinced that these facts explain the particulars of the "offence" with which the accused persons were charged under the second count. Suffice it to say that the contents of the charge in respect of the second count do not show the specific offence under which the accused persons were charged with. Secondly particulars thereto do not provide for reasonable information as to the nature of the offence. This error in my view is fatal for it goes to the roots of justice in the matter. As such it vitiates the proceedings. It was not correct therefore for the trial court

to r find the accused persons/appellants guilty of the offence under second count. As regards to the 1st count, the prosecution alleged that the appellants did enter into the Kazimzumbwi Forest Reserve without a permit which allegation was disputed by them. The Appellants allege that they are the owners of the land in question. The first appellant contended that he acquired the land after he had purchased it. He always insisted that the 7 land on which he was found does not fall within the territorial area of Kazimzumbwi Forest Reserve. Going by the submissions in this appeal along with the evidence adduced it is clear that both the Government and the Appellants claim to be the rightful owners of the land. There is a dispute over ownership of the land which ought to have been resolved before one resort for a Criminal proceedings based on land trespass. As there is an outstanding dispute over ownership of the land the government could have properly moved the court for Eviction Orders obtainable under civil proceedings or else the charge for trespass, as the case was here, cannot be proved beyond reasonable doubt against the accused person. Had the trial court this in mind it could not have reached at the decision convicting the accused persons with the first count as it did. With what is discussed herein above, I decline supporting the conviction entered against all appellants. As a result I quash the co'nviction and set aside the sentence imposed by the trial court. As the appellants are no longer in jail for the term of imprisonment imposed has expired I make no order releasing them from jail. Dated at Dar es Salaam this 10th November, 2016 E. J. Mkasimongwa JUDGE 10/11/2016 8 . " Date: 10/11/2016 Coram: Mkasimongwa, J For Appellant: All present in person For the Respondent: Miss Neema Mbwana (State Attorney) C.C. Judith Court: Judgment delivered in Chambers this 10th day of November, 2016 in the presence of all appellants in person and Miss Neema Mbwana for the Respondent. Right of Appeal is explained. E.Jd~~ JUDGE 10/11/2016 9

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