

TANZANIA / JUDGMENT

john qwaray vs salum rajabu

2009 tzhc 140 8 may 2009

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TZHCDECIDED
8 May 2009

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IN THE HIGH COURT OF TANZANIA AT DODOMA (PC) CRIMINAL APPEAL NO. 8 OF 2008
(DODOMA DISTRICT COURT CRIMINAL APPEAL NO. 51 O F2007 - ORIGINAL CRIMINAL CASE
NO. 34 OF 2007 OF CHAMWINOIKULU PRIMARY COURT) JOHN QWARAY.....
APPELLANT Versus SALUM RAJABU.....RESPONDENT 01/04/2009 & 08/05/2009

JUDGEMENT

HON. MADAM, SHftNGALI, J. This is a second appeal by the appellant JOHN QWARAY. The matter started before the Chamwino Ikulu Primary Court in the Criminal Case No. 341/2007 where the present respondent SALUMU RAJABU sued the appellant for the offence of malicious damage to property contrary to section 326 (1) of the Penal Code. After a full hearing from both sides and their witnesses the trial Primary Court unanimously found that the appellant was guilty of letting his cattle and goats astray and trespassed the respondent's shamba and destroyed his crops. Hence, the appellant was convicted 2 and sentenced to pay fine TShs. 100,000/= or suffer imprisonment term of 6 months in default of payment. The appellant was also ordered to pay TShs. 166,000/= being the half value of the destroyed crops as compensation to the respondent. The appellant's first appeal to the District Court was dismissed for lack of merits. The first appellate court was satisfied that there was overwhelming evidence on the trial primary courts record to establish beyond doubt that the appellants animals marauded the respondents farm and destroyed his crops. The first appellate District Court correctly observed that even the sentence imposed together with compensation order was correctly in law because the estimate value of the destroyed or damaged crops was done by an independent witness (SM4) who is a qualified agricultural officer (Bwana Shamba). Still disgruntled with that decision the appellant is now before this court attempting to challenge and impugn the decision of the lower courts. In his petition of appeal the appellant has filed several grounds centred on the facts of the case insisting that there was no sufficient evidence to prove that his 50 heads of cattle and 20 goats did trespass and destroy the respondents crops. On the second leg 3 he is complaining that his defence evidence was not properly considered by the trial Primary Court nor the first appellate court. Thirdly, he is complaining that he paid fine of TShs.100,000/= to the trial court but no receipt was issued to him and that there was no justification for the trial court to award the respondent with compensation of TShs.60,000/= and 10 bags of maize. During the hearing of this

appeal the appellant who was unrepresented and quite troublesome repeated the same complaints and when he was asked on whether he has read the contents of the trial primary court's order of compensation, he replied that he was ordered to pay 10 bags of maize and TShs.60,00/= to the respondent. He further lamented that even if the judgement or order of the trial court is different, the respondents crop were not destroyed by his animals. In response, the respondent stated that it is unfortunate that the appellant has been denying the obvious facts established by the evidence that his animals did destroy his crops. He contended that his destroyed crops were witnessed by the village elders and the police. The respondent claimed that initially the appellant was arrested and taken to the police station where he admitted the responsibility and pleaded with the police for his release in order to settle the matter amicably with him. The respondent stated that 4 later and after his release from police custody the appellant changed his mind and insisted that his animals has never destroyed respondents crops. As a result the matter was referred to the trial Primary Court. Having gone through the record of the proceedings of the lower courts and having heard the parties in this appeal, I am satisfied that this appeal is devoid of any merit. There is overwhelming evidence from credible witnesses that the appellants beasts destroyed the crops of the respondent. It should be understood here that the important issue in this case is not the number of appellants animals which trespassed and caused havoc in the respondents farm but the fact that the respondents crops were destroyed by the appellants animals. Whether they were 6 goats, 20 goats or 50 heads of cattle; there is clear evidence that the respondent's crops were destroyed by the appellants uncontrolled animals. Thanks to the trial primary Court which went further and specifically pointed out that the crops destruction was perpetrated by 6 goats of the appellant. In addition, the trial primary court record is clear that the appellant attempted to settle the matter out of the legal machinery but later changed his soul. 5 The appellants complaint that his defence evidence was not considered by the trial Primary Court has no leg to support. The record of the trial court is clear that his defence evidence was outshined and discredited by the credible and truthful evidence from the prosecution side. On his third complaint, it appears that the appellant was not issued with his receipt after the payment of the fine TShs. 100,000/= to the trial Primary Court. I say so because in my perusal in the relevant court file, I have discovered both the original and a copy of the Exchequer receipt no. 25117983 dated 19/12/2007 in respect of that amount of fine in Criminal Case no. 341/2007 and in the name of the appellant. I think that was an oversight or omission which do not affect this appeal. The appellant is adviced to collect his receipt from the court. On the second leg of his third complaint, it is unfortunate that the appellant is not conversant with the compensation order issued against him by the trial Primary Court. Let me remind him at this juncture that he was ordered to pay TShs. 166,000/= to the respondent as compensation, being half of the value of the destroyed or damaged crops. The alleged compensation of TShs.60,000/= and 10 bags of maize is the appellants own creation which does not appear anywhere in the lower courts decision. 6 Finally, this appeal is hereby dismissed and the appellant is ordered to comply with the trial Primary Courts decision and pay the stated compensation to the respondent. This being a criminal matter there is no order for costs. Judgement delivered todate 8th May, 2009 in the presence of both parties. 08/05/2009

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