

TANZANIA / JUDGMENT

pagi so chiluli vs ngwagi so malale

2019 tzhc 2119 9 january 2019

COURT
TZHCDECIDED
9 January 2019

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IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISTRY OF SHINYANGA AT SHINYANGA PC. CRIMINAL APPEAL NO 14 OF 2018 (Arising from Criminal Appeal No. 3 of 2018 of Kishapu District Court at Kishapu, originated from Criminal Case No. 26 of 2017 at Uchungu Primary Court). PAGI S/O CHILULI..... APPELLANT VERSUS NG'WAGI S/O MALALE.....RESPONDENT

JUDGEMENT

03.12.2018 & 09. 01.2019 Ebrahim, J.: This is a second appeal. The appellant herein had filed a Criminal Case at Uchungu Primary Court, Criminal Case No. 26 of 2017. In that case the respondent was charged with two counts of destruction of trees c/s 85 of the Forest Act, Act No 10 of 2002; and destruction of properties c/s 326(1) of the Penal Code, Cap 16 RE 2002. After hearing the evidence from both parties, the trial court found the appellant failed to prove his case and accordingly acquitted the respondent. The appellant was aggrieved by the decision of the trial court. He appealed at the District Court of Kishapu, Criminal Appeal No. 3/2018. The first appellate court found out there was an error on the admission of the valuation report and no sketch map was tendered to show the damaged area. The appellate magistrate therefore could not order compensation and accordingly dismissed the appeal. Still dissatisfied by the concurrent findings of the lower courts, the appellant preferred this appeal raising three grounds of appeal. He is faulting the appellate court for acquitting the respondent despite the evidence on record; for disregarding the expert report without reasons; and for raising a fact which was not an issue suo motto. When the appeal was called for hearing, both parties appeared in person, unrepresented. The appellant adopted his grounds of appeal and added that there was an estimate of Tshs. 500,000/= as destruction costs. 2 The respondent on the other hand vehemently denied the allegations and told the court that he did not destroy the appellant's farm. He denied knowing appellant's farm and insisted that he won at both lower courts. In brief rejoinder, the appellant stressed that there was no evidence at the lower courts. Before addressing the grounds of appeal presented in court; and going through the records and particularly the petition of appeal, I observed that the petition of appeal has not been signed by the appellant. Thus before writing a judgement, I wanted parties to address me on the issue as to whether in the absence of the signature of the appellant, there is an appeal before this court. The appellant simply said that

he signed it but however it is not his responsibility. As for the respondent, he left it for the court to decide. I have carefully heard the submissions by both parties on the raised issue. The Law, i.e. Section 25(3) of The Magistrates Court Act, Cap 11 RE 2002 gives the modality of presenting the appeal to the High Court which originates from the Primary Court. Such an appeal shall be by way of Petition of Appeal filed in the District Court from which the decision or order is appealed against. 3 It follows therefore that the appeal should be presented in writing and that being the case it goes without saying that it has to be signed by the person presenting the appeal. In the absence of which, there is no competent petition of appeal presented in court as it is in our instant case. From the above therefore, I accordingly struck out the petition of appeal for being incompetently filed before the court. 09.01.2019 4

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Prepared on 13 October 2026 · Esheria