

TANZANIA / JUDGMENT

paskali joseph vs evarist martin

2024 tzhc 25 22 january 2024

COURT
TZHCDECIDED
22 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI PC CRIMINAL APPEAL NO. 14 OF 2023 (Aringing from Criminal Appeal
No.21/2023 in the District Court of Babati at Babati, Original criminal case 10/2023 primary court
of Babati district at Bashnet) PASKALI JOSEPH..... APPELLANT VERSUS
EVARIST MARTIN..... RESPONDENT

JUDGMENT

11th November 2023 & 22nd January, 2024 Kahyoza, J.: Paskali Joseph instituted criminal proceedings against Evarist Martin where the latter was charged with the offence of malicious damage to property contrary to section 326 (1) of the Penal Code, [Cap. 16 R.E 2022] before the primary court. After the prosecution's case, the trial magistrate ruled that the respondent, the accused person had no case to answer. Aggrieved, Paskali Joseph appealed to District Court of Babati, which upheld the decision of the trial court, that the prosecution failed to establish a prima facie case against accused person. Following the 1 I Page decision of the appellate court, Paskali Joseph appealed to the High Court. Was a prima facie case established? After considering the three grounds of appeal and the arguments raised during the hearing of the appeal, there is only one issue whether the evidence on record disclosed the prima facie case against the respondent. There is no doubt that this Court is a second appellate court as the matter commenced before the primary court. Both, the first appellate and the trial court made a concurrent finding that the appellant did not establish a prima facie case against the respondent. It is trite law that the second appellate court can interfere with the concurrent findings of facts of the trial and first appellate where it is satisfied that the courts have misapprehended the evidence in such a manner as to make it clear that its conclusions are based on incorrect premises. See *Salum Bugu vs Mariam Kibwanga Civ. Appeal No. 29/1992*. The Court of Appeal in another case of *Amratlal Damodar Maltaser and Another t/a Zanzibar Silk Stores Vs. A.H Jariwalla t/a Zanzibar Hotel [1980] T.L.R 31* where at page 32 the Court of Appeal stated- 2 | Page "Where there are concurrent findings of facts by two courts, the Court of Appeal, as a wise rule of practicing should not disturb them unless it is clearly shown that there has been a misapprehension of evidencing a miscarriage of justice or violation of some principle of law or procedure." The first and foremost task is to find out whether the two courts below reached the findings in

misapprehension of facts or violation of some principle of law or procedure. If there is such violation, I will have to interfere. I had time to consider the first ground of appeal raised consider the first appellate court's decision and found that the appellate court did not re-evaluate the evidence of the witnesses in primary court rather it concurred with the decision of primary magistrate court. Failure to re-evaluate is a good ground for a second appellate court to interfere with the concurrent findings of the two courts below. I wish to state the obvious that the respondent was charged with the offence of malicious damage to property contrary to section 326 (1) of the Penal Code. Section 326 (1) of the Penal Code states that- "Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence." To establish the case to answer against the accused, the prosecution had to prove the ingredients of offence, which are *meas rea* 3 | Page that is wilfully and unlawfully and the *actus reus* which is to destroy or damage property. This Court in *Fabian Ipeleka Vs Mussa Ernest Criminal Appeal No. 16 Of 2020 H.C Mtwara (Unreported)* held that- "in order to convict someone on malicious damage of property it must be proved that a person wilfully and maliciously damaged the property of another person that means it was necessary for the prosecution case to prove that the respondent wilful and malicious destroyed the properties of the appellant". The appellant's evidence showed that the respondent damaged his property. Passing through the decision of primary magistrate, I noticed that he did not state clearly which ingredient of offence the appellant failed to prove. The primary court magistrate simply held that the prosecution failed to bring to court the exhibits of crops which were said to be destroyed by the accused. One basic question one asks is whether it was necessary for the said crops to be brought to court to prove the offence that the offence was committed. The fact that PW1, PW4 and PW5 testify to have witness the destruction that was done by the accused was enough reason for the accused to answer his case. The duty of the prosecution was to establish whether the respondent damaged or destroyed the appellant's crops and whether he did so maliciously. The trial court did 4 | Page not testify why it did not trust the prosecution witness, including Mr. Daniel (Pw4), an eye witness. It is obvious the primary trial magistrate did not evaluate the evidence adduced by the prosecution witnesses because of failure to bring the crops that were destroyed by the accused as exhibits which was not correct, since there was evidence adduced by the prosecution for accused to offer their evidence. Given the evidence on record, I am of the firm view that the appellant's evidence established a *prima facie* case against the respondent enough to require him to offer his evidence. The Court in case of *Ramanlal Trambaklal Bhatt Vs. R [1957] 1 EA 332* it was held that- "*prima facie* case is the level of evidence that should be established in order to require the accused to offer their defence, this is mandatory requirement of the law is long established." Regarding the second and third ground of appeal I concur with the respondent's advocate that they were new grounds of appeal which were not raised before the first appellate. For that reason, this Court being the second appellate court cannot entertain them. As it was held 5 | Page in a case of *Hassan Bandala @ Swaga Vs. Republic Criminal Appeal No. 386 of 2015* that- 7t is now settled that as a general principle this court will only look into the matters which came up in the lower courts and were decided, and not on new matters which were not raised nor decided by neither the trial court nor the high court on appeal". In the end, based on the above authorities, I find that the prosecution had established a *prima facie* case against the respondent, hence the trial magistrate ought to have gave the

opportunity to the respondent to give his evidence. Consequently, I set aside the judgement of the first appellate court and the ruling of the trial court to the extent that the respondent had no case to answer. I make a finding that the respondent has a case to answer. I order the record to be remitted to the trial court to proceed from that stage. I order accordingly. Dated at Babati this 22nd day of January, 2024. J. R. Kahyoza Judge 6 | Page Court: Judgement delivered in the presence of the parties and Mr. Gofrey Mlingi advocate for respondent. B/C Ms. Fatina Haymale (RMA) present. J. R. Kahyoza Judge 22/01/2024 7 | Page

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