

TANZANIA / JUDGMENT

20001219 TZHC Mbeya

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TZHCDECIDED
19 December 2000

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IN THE HIGH COURT OF TANZANIA, TZHC, Mbeya District Court, CRDHN, LHPFEAL NO. 14 OF 2000 (Fron Orie; Crimin 3.1 Cc, se No., 130/99 of the District Court of Rungwe District at Tukuyu)) 30 MARIL, M KIJ. J. \i\BOKO) VERSU; '3 THE REF TJBLI C. e o n o c o • o • o o o o o o o o o • o e o o • o o o o , o o o , o • o c RES} ONIBNT JUDCF, lENT The appellants v, cre convicted of criminally trespass c/s 299(a) of Penal Code. The evidence on which they were convicted is rather clear. On 1st Jcmu: J. ry, 1999, John Morice My. -2Jd (fW1) the Branch Manager of the erstwhile National Bank of Commerce (1997) Ltd, discovered that surveyed plots that were allocated to his employer were being developed by the appellants. It is established by Mbukoti Laizer (PvJ2), the Rungwe District Land Officer and Robert Olotu (PW4) that the parcels of land in question were indeed allocated to the NBC (1997) Ltd. Essentially the case for the prosecution The appellants denied the charge. iden Ko. nyeka, tp. - first appellant, swore that he had been occupying that piece of land since 1936 when he inherited it from his father. He was 62 years old when he testified. He denied that NBC (1997) had any just claim over it. Ezekiel 'J; 'homas M1: nlusar 11ba uastified that (Dd2) put up claims on parcels of the land that was claimed by NBC (1997) Ltd, On his 1st hearing Mw2S, ce; a (2nd appellant) swore that he obtained the land legally from the first appellant. I 1 Vio. rio. m Kame1. boko (3rd appellant) also got -0 C /) C.. 2 her parcel of land from the first appellant. The learned trial magistrate found that the prosecution case had been proved according to law. He convicted the appellants and sent each of them to jail for six months. They have appeal; it is unfortunate that their appeal is being heard after having served all the sentence. This is not the kind of justice which one would expect specially where the Evidence is allowed. Mr. Mwakolo, learned counsel, D. Bel for the appellants, filed three grounds of appeal as follows:- 'I • that the learned trial magistrate erred in point of law and fact when he determined the matter as a crime when in fact it is civil in nature as the central issue was ownership of the disputed parcel of land;

- that the trial court likewise erred when he convicted and sentenced the appellants in respect of criminal trespass while the offence was not proved beyond any reasonable doubt; and that the trial court erred in law, in ordering the appellants to remove the building materials at the disputed site in the case which is clearly a civil matter. Mr. Mwakolo argued the appeal generally. By way of explanation he submitted that the matter was civil in nature and that the appellants had established a genuine claim of right over

the disputed plots. Now what must be done in order to prove a charge of criminal trespass, According to section 299 of the Penal Code anyone commits that offence if he

- (a) unlawfully enters into or upon property in the possession of another with intent to commit an offence or to intimidate or to annoy any person in possession of such property or ...
- (b) having lawfully entered into or upon such property unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit an offence. The key elements that must be proved are the requisite actus reus and an intention to commit an offence. The first element is the actus reus, which is the entry on the disputed area. There is, in other words, evidence of the existence of the case. In order to complete the offence they must be shown to have entered on the land with intent to commit a crime. All the appellants have raised in defence of a claim of right. It is not a total defence to the charge if the appellants can establish on a preponderant evidence that the land is theirs; the second and the third accused persons established lawful acquisition of the land for there is no evidence which shows that they knew that the first accused was illegally in possession of the land. He devised onto them, I would allow their appeal on that count. The first accused swore that he inherited the land from his late father and that he had been in peaceful possession for some 36 years before he was prosecuted. The prosecution did not dispute his account on that issue. If, in the meantime the land has been surveyed and some of it was allocated to the N.B.C (1997) the issue boils down whether the first appellant has a genuine claim over that land. This, as Ivir, a witness pointed out, is a civil matter. It is, therefore, been proved on the part of the first accused. Since it is a civil matter it must be resolved in a civil court in as much as he has full protection under section 9 of the Penal Code which provides that a person is not criminally responsible in respect of an offence relating to property, if the act done, or committed to be done by him with respect to the property was done in exercise of an honest claim of right and without intention to defraud. Accordingly, the appeal succeeds. Convictions are quashed and the sentences and order for demolition are set aside. Each of the appellants is discharged from prison if they are still there. Judgment shall be delivered by the District Registrar. JUJXIB 19/12/2000. 4 Coram: Sa Ao N. Varnbura 1 CGX.J. Appellants: Lbscent For Appellants: Mr. Mwo.kilo Advocate - present For Republic: C/C-. Mrs. Mronzi Court: ___, Judgment delivered in open court at the presence of all the Advocates and in the absence of the appellants 19/12/2000 DISTRICT P.E.ISTRA..R. I MBEYI\.

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