

TANZANIA / JUDGMENT

PC CRIMINAL APPEAL NO

COURT
TANZLIIDECIDED
1 January 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE UNITED REPUBLIC OF TANZANIA IN THE HIGH COURT OF TANZANIA IN THE SUB-REGISTRY OF MTWARA ATMTWARA PC CRIMINAL APPEAL NO. 17066 OF 2024 (Originating from Criminal Case No. 13 of 2024 of the Primary Court of Kiiwa District at Masoko and Criminal Appeal No. 11584 of 2024 of Kilwa District Court at Kilwa) YUSUFU MOHAMEDI MMADI..... APPELLANT VERSUS WAMIMANYWELE HEPO..... RESPONDENT

JUDGMENT

2* September & Sri October 2024 DING'OHI, J. Wami Manywele Hepo, the respondent herein, was arraigned before the Primary court of Kilwa District at Masoko (trial court) for the charge of Setting fire to crops contrary to Section 321 of the Penal Code, Cap 16 R.E 2022. It is in the trial court's records that On 25th September 2023 at 13:00 hours at Mpala, Kilwa District in Lindi region the respondent set fire to the appellant's farm measuring three and a half acres and caused damage to the crops. The value of the damaged crops per the 'Valuation Report' by the Page 1 of 11 SM3 is Tshs 5,979,381/=, the property of the present appellant. The valuation report to that effect was admitted by the trial court as Exhibit "M1". At the hearing before the trial court, the appellant had two witnesses; TATU MOHAMED! YUSUFU (SM2), his wife, and EDNA ULASA NDUM1AKUNDE (SM3). Appellant and SM2 respectively avowed that on the fateful day, they saw the respondent setting fire to their farm. It is alleged on being asked why he was setting a fire, the respondent threatened them with a knife and left the scene. Subsequently, the appellant reported the matter to the Kitongoji chairman where the effort to settle the dispute proved futile as the respondent refused to proceed with the settlement. The matter was then referred to the Ward Tribunal where the appellant was advised to take the matter further to the police station. The police directed the inspection and valuation of the destroyed property (shamba) which was performed by the SM3. The matter was then taken to the trial court where the charge which is the result of this appeal was made against the respondent. In his defence, the respondent categorically denied being part of the offence allegedly committed against the appellant. He raised the defence which may be considered as part of alibi. He avowed that on 25th September Page 2 of 11 2023, when the offence is alleged to have been committed he was not at the mentioned scene of the incident but at another place called Matandu where he went to harvest maize on his farm. In an attempt to prove that, the respondent brought one HASSANI MOHAMEDI LINGOVE (SU2). In his evidence, the SU2 expounded that on the day of the incident,

he was with the respondent harvesting maize at Matandu village. At the end of the day, the trial court found that the charge against the respondent was not proven to the required standard. The respondent was accordingly acquitted for the insufficient evidence. Unhappy with the trial court's findings, the appellant appealed to the District Court of Kilwa (the first appellate court) where he also lost, hence this second appeal. In his petition of appeal, the appellant has raised the following grounds against the judgment of the first appellate court, namely;

1. That, the Kilwa District Court (hereinafter to be referred the first appellate court) erred in law and fact to uphold the respondent's defence of alibi, while the sought alibi was not proved to the required standard of law. Page 3 of 11
2. That, the first appellate court erred in law and fact to disregard the appellants allegation that his evidence and of his witness were not considered despite fact that they proved the offence against the respondent without shade of doubt
3. That, the first appellate court was wrong for repeating the same error of dismissing the charge against the respondent who totally failed to dispute or object the valuation report exhibit M1 when was being tendered by the appellant at the trial, the circumstance which was enough to convince the court to believe that the respondent committed the alleged offence. 4 That, the first appellate court was wrong for not comply with a salutary principle of law that since the matter was a first appeal, was in form of re-hearing by re-evaluate the entire evidence on record failure of which resulted to acquit the respondent who deserved to be convicted with the offence of firing the appellant's farm. When the matter was fixed for hearing before me, both the appellant and respondent appeared in person, unrepresented and, they prayed that this appeal be heard orally, Page 4 of 11 Supporting his appeal, the appellant opted to combine all of his grounds of appeal and argue them together. He submitted that he was aggrieved with the decisions of both the trial and first appellate court because the respondent admitted to setting fire to his farm and the said respondent did not object to the admission of the valuation report (Exhibit M1). He further argued that the respondent's witness (SU2) lives in Mtwara and that could not know anything done by the respondent at Kilwa. The respondent's witness came to Kilwa only once. The appellant was of the view that according to our law, once a person admits to committing the offence charged, he must be found guilty. On his side, the respondent vehemently resisted the appellant's appeal on the reason that all grounds were devoid of merit. According to him, the valuation officer (SM3) who was brought by the appellant for the valuation of crops did not involve him at the time she conducted the valuation of the alleged destroyed crops. He concluded that he did not admit to having set fire to the appellant's farm. In a brief rejoinder, the appellant insisted that they all (he and the respondent) attended the valuation done in the presence of SM3. Page 5 of 11 I have scrupulously considered the parties' submissions. Having done so, I am of the considered view that the main controversial issue to be determined by this court is whether the prosecution party at the trial court proved the charge against the respondent beyond reasonable doubt. It has often been stated that a second appellate court should be reluctant and slow to interfere with findings of fact by a

trial court, and more so where a first appellate court has also concurred with findings by the lower courts. In Bomu Mohamed vs Hamisi Amiri (Civil Appeal No. 99 of 2018) [2020] TZCA 29 the Court of Appeal of Tanzania observed inter alia that; We are very alive to a well established rule of practice that on a second appeal, the Court will not normally interfere with a concurrent findings of fact of courts below unless there are sufficient grounds to do so. These grounds will be things like misdirection, non-directions or misapprehension Of the evidence' Starting with the first ground of appeal, the appellant faulted the trial court for upholding the respondent's defence of alibi, while the sought alibi was not proved to the required standard and per the law. I have carefully considered that ground. It is a position of the law and it is now settled that in a criminal trial where the defence of an alibi is raised the accused person Page 6 of 11 Is not required to prove that defence, let alone to prove it beyond all reasonable doubt. In the case of Richard Otieno @ Gullo vs Republic (Criminal Appeal 367 of 2018) [2021] TZCA 120, the Court of Appeal of Tanzania quoted with approval the decision in the case of Shafii Abdallahaman Mbonja v. R, Criminal Appeal No. 104 of 2017 which cited the decision of the Court of Appeal of Kenya in the case of Jane Wanjiru v. R [2006] eKLR, it was stated that; 'Once again, the (earned Judge dearly appreciated that once the appellant had raised the defence of alibi, the evidential burden shifted back to the prosecution to prove and beyond reasonable doubt that the appellant's alibi was false. We would repeat and we shall continue to assert that there is no burden upon the accused person who raises the defence of an alibi to prove the truth of that defence' Upon going through the proceedings of the trial court, it is evident that the appellant had not led the evidence to disprove the defence of alibi by the Respondent that on the date of incidence, he was not at the mentioned scene of the crime. That is to say, no evidence by the appellant's side show that he was able to prove that the said defence of alibi given by the respondent was false, especially taking into account that the respondent had Page 7 of 11 brought a witness (SU2) who was with him on the day of the incident. The witness was found credible by the trial court. I would have found the same. This ground will also fail. The appellant further complained under the second and fourth grounds of appeal that the first appellate court did not re-evaluate the evidence of the trial court and disregarded his evidence and that of his witness despite the fact they proved the offence against the respondent without a shade of doubt. I have considered that complaint. However, upon scrutinizing the entire records of the lower courts, I realized that the first appellate court had successfully done its duty of re-evaluating the evidence available in the trial court's record. It did not end there. It properly considered the evidence of all witnesses before it was found as it did. The following are the reasons for my stance; During the hearing of this case before the trial court the appellant avowed that he reported the respondent to the village chairman and upon his arrival the respondent admitted to being the one who set the fire to the appellant's farm. In its judgment, the first appellate court reasoned well and evaluated why the appellant did not bring the village chairman as a material witness Page 8 of 11 who could cure for what the appellant said. The part of the trial court judgment speaks to itself: 'Kitu kinacholeta shaka ni kwamba mlalamikaji hakuweza kumleta mwenyekiti kama shahidi wake Hi aweze kuthibitisha kUe ambacho mlalamikaji anasema mbeie ya mahakama hii kwamba mara tu

baada ya tukio mshtakiwa aiiitwa kwa mwenyekiti na kufanya mazungumzo biia mafanikio. Mahakama hii inatia shaka kwa sababu na shahidi wake Bi Tatu (SM2) ni mke na mume hivyo bast wote ni waathirika wa tukio la mote kwa sababu hiyo Ushahidi wao unatakiwa kutffiwa nguvu na Ushahidi mwingine kwa mazingira ya shauri kutokana na kwamba mshtakiwa anajitetea kwamba yeye hakuwepo eneo hiio slku hiyo. Hivyo kuweza kukanusha na kuthibitisha kuwa mshtakiwa amehusika na tukio hill,... Hikuwa vizuri zaidi mwenyekiti ambaye aiikuwa mtu wa kwanza kusuluhisha angeweza kuitwa kuja kuthibitisha usuluhishi baina ya mlalamikaji na mshtakiwa. Mshtakiwa anakana, anasema hajawahi kuitwa kwa mwenyekiti. Kwa Ushahidi huo shaka ni kubwa sana dhidi ya tuhuma anazotuhumiwa nazo mshtakiwa../ Taking into consideration the wordings of the above quotation from the judgment of the trial court I am satisfied as I have observed herein above Page 9 of 11 that the trial court had managed to evaluate the evidence of both sides and come up with the proper findings which were properly endorsed by the first appellate court. This ground also fails. The appellant's complaint in respect of the third ground of appeal is that since the respondent has not objected to the admission of the valuation report (Exhibit M1) tendered by SM'3, its enough to convince the court to believe that the respondent committed the offence charged. I have considered this ground also. Upon carefully going through the judgment of the trial court and that of the first appellate court, I will not agree with the appellant's contention. The reason for my disagreement is that the only thing that the appellant was required to prove before the trial court under the circumstances of this case was whether it was the respondent who set fire to his farm. The valuation report (Exhibit M1) would come to assist after the proof of the evidence that the respondent was the one who set the fire to the shamba with different crops. The purpose of the valuation report is to show what losses were Incurred after someone set fire to the crops. For the benefit of the appellant the none objection to the admission of exhibit in court, if any, is not necessarily that a party who did not so object has admitted to the commission of the offence. Page 10 of 11 It is for the foregoing reasons, that I find the judgments and findings by the lower courts should stand undisturbed. The entire appeal is therefore devoid of merit. It is hereby dismissed. DATED at MTWARA this 9th day of October 2024. COURT: The judgment was delivered this 9th day of October 2024 in the presence of the appellant and the absence of the respondent. Page 11 of 11

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/319453/source_file/1391d2196e23eb5e/PC_CRIMINAL_APPEAL_NO_17066_OF_2024.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/yusufu-mohamed-mmadi-v-wami-manywele-hepo-Arson-tanzlii-2024--6a3ea52d3b1caa9129826e20>

Prepared on 14 October 2026 · Esheria