

IN THE REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)
AT MTWARA

PC CRIMINAL APPEAL NO. 2 OF 2021

(Originating from Kinjumbi Pr/Court in Criminal Case No. 2 of 2020
and Criminal Appeal No. 1 of 2021 of District Court of Kilwa Masoko)

MOHAMED HAJI MKETO APPELLANT

VERSUS

SAIDI MFAUME LIPWELE 1ST RESPONDENT

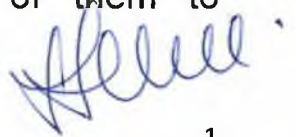
SALIMA SAIDI MALISEN 2ND RESPONDENT

FATUMA SAIDI MALISEN 3RD RESPONDENT

JUDGMENT

Muruke, J

Mohamed Haji Mketo, was the complainant at trial primary court, against the three respondents. They were charged for an offence of setting fire to the crops contrary to section 231 of the penal code cap 16. (Trial court Kinjumbi Primary Court) upon hearing both parties, convicted the three respondent, sentenced compensation of 500,000 each of them to Mohamed Haji Mketo.



Being dissatisfied, they filed appeal, at District Court of Kilwa at Kilwa Masoko in which trial court decision was reversed. Mohamed Haji Mketo was dissatisfied, with district court decision, thus, preferred present appeal raising grounds of appeal articulated in the memorandum of appeal.

Upon being served, both respondent appeal. However, did not appear for summon them, as evidenced by an affidavit of process server

Yusufu Ali Machuya dated 29th March 2022, witnesses by honourable Vumilia Musa Matemela.

On account of failure to appear, this court ordered hearing to proceed in the absence of the respondent. On the hearing date, appellant was in person, thus requested court to adopt his grounds of appeal as his submission in support of appeal. This is a second appeal, having originated from primary court. The issue to be considered, is whether there is point of law worth considering. In another way whether District court decision to involve section 21(1) (b) of the magistrate courts Act, Cap 11 R.E 2019.

I wish to start by District court opinion that cases of the nature should be not be tried by Primary Court. It is worth nothing that law provides for jurisdiction of Primary Court to try criminal; cases. This was provided by law. Jurisdiction being conferred by the law cannot be easily removed lightly unless, the law is changed. Offence that respondents were facing, trial court had requisite jurisdiction. Complainant claim was supported by evidence of SM2 Athumani Kitelebu, at page four (4) of trial court proceedings that: -



“Niliwaona Fatma na Salma wanaunguza moto kwenye shamba la Duka (SM1) ingawa sikuona mkononi walikuwa na kiberiti na kizinga pia sikuwauliza ila nilienda zangu”.

On clarifications, SM2 at page 4 of trial court proceedings further said that:

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“Ulipowaka moto ndio walipokuwepo Fatuma Salma. Walichokolezea sikukiona”.

On further account as to what happened, SM3 Fatma Mwera, testified at page 4 and 5 of the typed proceedings that: -

“Nilimuona Said Mfaume anachoma moto shambani kwa Mketo na nilivyorudi nyumbani nikaja kumuona Fatuma na salma wanachoma moto shambani kwa Duka”.

At page five of trial court proceedings Sm3 was further recorded during cross examination that: -

“Kipindi namuona Mfaume nilikwenda shambani kwetu naangua emebe na nilivyorudi nyumbani nikamuona Fatma na Salma. Nina uhakika kuwa ni wao maana walipokuwa ndio moto ulipoanzia kuwaka kwa shamba la Duka”.

On the other hand, SU2 Salma Saidi Maliseli second respondent at page 6 of trial court proceedings on her defense she said;

“Duka shamaba hana na tarehe aliyesema mimi sikuwepo huko shamba”.

SU Fatma Said third respondent on her defense she simply said:

“Sijachoma shamba la Duka na wala hana shamba”.



Equally so, Said Mfaume Liwile SU1 defended himself that: -

“Sijachoma moto shamba la Duka na sijui kama Duka ana shamba na liko wapi”.

From very brief defense of the Respondents themselves, and in presence of eye witness SM2, SM3 and SM4, appellant evidence is heavier than the respondents (the accused) at the trial court. Thus, there was no any justification for invocation of section 21 (1) (b) of the magistrate Courts Act, Cap 11 R.E 2019. Thus District court decision is quashed. Kinjumbi Primary Court decision is restored with variation on sentence, that six months' imprisonment sentence is set aside and substituted with conditional discharge of twelve (12) months from the date of this decision. Order for compensation to be enforced forthwith.




Z. G. Muruke

Judge

30/11/2022

Judgment delivered in the presence of appellant in person.




Z. G. Muruke

Judge

30/11/2022