

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

PC. CRIMINAL APPEAL NO. 19 OF 2017

*(Originating from Karatu District Court Criminal Revision no. 10/2017
Karatu Primary Court Cr. Case No. 187/2017)*

BENJAMINI WILLIAM.....APPLICANT

VERSUS

EMMANUEL FRANCIS.....RESPONDENT

JUDGMENT ON APPEAL.

S.M. MAGHIMBI, J:

This appeal emanates from the Karatu District Court Criminal Revision No. 10/2017 the same originating from Karatu Primary Court Criminal Case No. 187/2017. The appellant was aggrieved by the Ruling of District Court and has lodge this appeal on three grounds that:

1. The District Court and the lower primary curt erred in law and in fact by entertaining the matter without having jurisdiction.
2. That the appellate court and the trial court did fail to determine the issues for determination which were in line in accordance with the principle of bonafide claims of rights as appearing in the evidence on record.

3. The District Court did fail to analyse the source of the complaint between the appellant and the Respondent and reached to the wrong decision.

The appellant prayed that this appeal is allowed and for an order that the matter be dealt with in accordance with the land disputes. Before this court both parties were unrepresented hence appeared in person.

On the day of the hearing, the appellant submitted that his demand at the trial court was that each party proves its ownership to the land and the trial court refused because it was not a land case. He hence argued that it was error for the District Court to return the matter to the primary court because they refused to receive his evidence. He prayed that his appeal is allowed.

In his reply, the respondent submitted that he has no dispute with the appellant over any land. His claim at the trial court is that the appellant damaged his property. He prayed that this appeal is dismissed.

The appeal before me is against a revisional order. Hence I will not go into the details of the substance of the evidence of the trial court because the decision has not yet been made thereto. The appellant's claim is that the dispute pending at the Primary Court Criminal Case No. 187/2017 is a land claims hence the court has no jurisdiction. The claim at the trial court is that the appellant has cut down some trees, *gravelia robusta* and *Minyaa* the property of the respondent Emanuel Francis. He was charged with the offence of Malicious Damage to Property c/s 326(1) of the Penal Code, Cap. 16 R.E 2002.

Having gone through the records of the trial court, I am in agreement with the decision of the District Court that at this point, it is difficult to determine whether or not the dispute pending at the Primary Court is a Land Dispute or not. Therefore at this juncture before the appellant enters his defence, it cannot be ruled out whether or not the issue pertains land.

The appellant also raised allegations that the primary court refused to hear his defence. I have gone through the records of the trial court and on the 04/07/2017 the parties were both present in court and the court recorded that the matter has come back from the district court and the same was to come for defence hearing on the 10/07/2017. The records further show that on 03/07/2017 the appellant had already lodged his appeal to this court at the registry of the District Court. The records further show that on 08/05/2017 the matter came for defence hearing at the trial court and the appellant informed the court that his witness had an emergency. The matter was scheduled for hearing on 12/05/2017, on that day when the parties appeared in court they were informed that the file had been called at the District Court. The record is hence clear that the appellant was given and still has an opportunity to enter his defence at the trial court. it is his habit of chicken jumping to the higher court before the conclusion of trial that led to the defence not being heard. Therefore if there is anyone that denies the appellant the right to enter his defence is his very own self.

That said, it is the finding of this court that the determination of whether or not the issue pending at the trial court is a land issue cannot be made before the evidence from both sides is adduced. Therefore the appeal before me lacks merits as it an issue raised prematurely at the District Court. For that reason, I hereby dismiss this appeal for lacking merits. The

matter shall be remitted back to the trial Primary Court to proceed with defence hearing.

Dated at Arusha this 11th day of July, 2018

**SGD
S. M. MAGHIMBI
JUDGE**

I hereby certify this to be a true copy of the original.



A handwritten signature in black ink, appearing to read "M. K. M. Maghimbi".

.....
**DEPUTY REGISTRAR
ARUSHA**