

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SUMBAWANGA
AT SUMBAWANGA
PC CRIMINAL APPEAL NO. 03 OF 2021

(Originating from Sumbawanga District Court Appeal No. 5 of 2021, Original Laela Primary Court Criminal Case No. 212 of 2020)

CHRISTOPHER ATHUMAN.....APPELLANT

VERSUS

SABAS MUSSA.....RESPONDENT

JUDGEMENT

Date of Last Order: 22/09/2022

Date of Judgement: 13/12/2022

NDUNGURU, J

The respondent successful sued the appellant in a criminal case No.212 of 2020 at Laela Primary Court (trial court) for the offence of Criminal Trespass c/s 299 (a) of the Penal Code, Cap 16 RE 2019. The appellant was sentenced to pay fine to a tune of Tshs. 200,000/= or in default of payment to serve two months imprisonment term in jail. He however paid fine. He was not satisfied with both conviction and sentence filed an appeal before the District Court of Sumbawanga (first appellate court) where it upheld the decision of the trial court.

Aggrieved by the first appellate court findings, the appellant has preferred the present appeal with petition of appeal comprised with one ground of appeal as quoted hereunder: -

- 1. The first appellate court erred in law and fact to determine criminal trespass in favour of respondent while the case itself is pure land dispute while lack jurisdiction.*

When the appeal was called on for hearing before this court the appellant appeared in person, unrepresented while the respondent was represented by James Lubus, learned advocate. The hearing proceeded orally.

In support of his appeal, the appellant submitted that the case is typically land dispute but it has been turned to be a criminal case. Further he submitted that the farm is his, he bought it in the presence of local leaders. He cleared the farm and cultivated. He later hired the farm to someone when he went back to his farm, he was told that he had sold the farm something which is not true. He prayed the farm be returned to the land dispute resolution forum; thus, his appeal be allowed.

In reply, Mr. James Lubus, learned advocate for the respondent submitted that he is familiar with **section 4 (1) of the Land Dispute** which provides that all land disputes be dealt to the land dispute resolution organ. He submitted that the case at hand is not a land matter. Section 73 of the Law of Contract provides that breach of sale agreement does not confer automatic right of the innocent part to repossess the sold item. That the appellant had already sold the land to the respondent. Thus, the matter transferred from civil to criminal. The lower courts were right to convict the appellant. Therefore, he subscribed to the decisions of the two courts below, he prayed for the appeal be dismissed.

In rejoinder, the appellant still insisted that the case was the land case, thus the disputed had to be referred to the Ward Tribunal or District Land and Housing Tribunal not to the court. Further he submitted that there was no any sale agreement between him and the respondent. There was no any criminality so to say. He prayed his appeal be allowed; the case be referred to the land dispute courts for resolving the ownership.

Having heard rival submissions from both sides, the petition of appeal, it is now my duty to determine whether the appeal can stand.

Am also aware that it is on very rare and exceptional circumstance s the Court will interfere with the concurrent findings of fact of the lower courts. See the cases of **Materu Laison and Another vs R. Sospeter** [1988] TLR 102 and **Amratlal Damodar and Another vs H. Jariwalla** [1980] TLR 31. In the case of Amratlal Damodar and Another vs H. Jariwalla {supra}, the Court of Appeal held that: -

"Where there are concurrent findings of fact by two courts, the Court of Appeal, as a wise rule of practice, should not disturb them unless it is clearly shown that there has been misapprehension of evidence, a miscarriage of justice or violation of some principles of law or procedure."

As hinted above, the respondent instituted criminal case against the respondent for the offence of criminal trespass contrary to section 299 (a) of the Penal Code, Cap 16 RE 2019. That on 12th day of December 2020 around 7:00hrs morning at Kisalala village, Laela Police District, Rukwa Region the appellant unlawful trespassed unto the farm owned by Sabas Mussa by cultivating therein.

In proving his case at the trial court, the respondent testified himself and her witnesses. He testified that on 12th day of December 2020 around 07:00hrs in the morning he went to his farm and therein he found the appellant cultivating therein. He went to inform local

leaders and thereafter to the police station. The appellant was arrested and charged with the offence of criminal trespass. Upon being cross examined the respondent stated that the farm he bought from the appellant for the sum of Tshs. 1,020,000/=.

His witness Florence Ulozi, he is the chairman of the village who testified that he witnessed the arrest of the appellant by the police officer and that he knows that the farm is the property of the respondent who bought from.

His second witness Sulbeto Kauzeni testified that he knows that the farm is the property of the respondent and that on 13/12/2020 the appellant was arrested at that farm for the offence of cultivating therein.

In defence case, the appellant Christopher Athuman testified that on October 2019 he sold the farm in dispute to the respondent for payment in instalments and the in the first instalment the respondent paid sum of Tshs. 700,000/= remained sum of Tshs. 800,000/= of which they did not put into writing. Further he testified that on June 2020 he approached the respondent and asked the farm for cultivation but the respondent denied and after that he decided to forcedly to cultivate part of the farm.

Looking at the testimony of the appellant and respondent, it is eminent that the source of the dispute which gave rise to the case then this appeal is ownership of the land.

From the record available, it is not in dispute that formerly the suit premise was owned by the appellant. It appears that the appellant disposed the same to the respondent. The evidence available is to the effect that payment of the sale was done by installments. Further the respondent paid some of the installments if not all.

The basis of the rival argument as far as the ownership of the land is concerned is that having disposed the suit land by way of sale, the respondent failed to honour the contract by his failure to pay the total amount. That it is by that failure the appellant is of the position that the title sometime the respondent's position is that he has paid the amount (consideration thus the suitland is his.

That being the circumstances, it cannot be denied that the matter at hand revalues land dispute, whose ownership has not been fully and finally determined. Under section 4 (1) of the **Land Dispute Courts Act** (Cap 216 R.E 2022) the Magistrates' Court have no jurisdiction to entertain land disputes. As stated hereinabove, as it seems that the appellant claims ownership of the land dimply because, if it is true that

the respondent did not affect fully sale payment the question before the Land Dispute Courts' which Ward Tribunal or District Land and Housing Tribunal, if the facts and evidence remain constant is whether breach of contract for sale of the disputed land entitles the vendor automatic rights of repossession of the land. As I have noted this could not be determined by the ordinary court as it is revealed in the judgment of the first appellate court (District Court) where it states "If the appellant believes that the respondent has breached terms of sale agreement, he is at liberty to claim damages from the respondent and not ownership or repossession of the sold land"

In the circumstances, I hold that the matter revolves the ownership of land. Thus the trial and 1st appellate court had no jurisdiction to entertain it.

In the premises I allow the appeal. I hereby nullify proceedings and the decisions of two courts below. I further advise the parties either of them to find his right before a proper forum with competent jurisdiction.

It is so ordered.




D. B. NDUNGURU

JUDGE

13.12.20220