



**Njeru v Republic (Criminal Appeal E006 of 2024)
[2024] KEHC 16065 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16065 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL APPEAL E006 OF 2024
LM NJUGUNA, J
DECEMBER 19, 2024**

BETWEEN

NICASIO MURIUKI NJERU APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal arising from the decision of Hon. N. Kahara (SRM) in the Magistrate's Court at Siakago Criminal Case No. 677 of 2020 delivered on 21st September 2023)

JUDGMENT

1. The appellant was charged with the offence of cutting down trees contrary to Section 334(c) of the Penal Code. The particulars of the offence are that on 26th August 2020, at Gichichi location in Mbeere South subcounty within Embu County, the appellant, jointly with others not before court, willfully and unlawfully cut down trees of indigenous species the property of Maganda Njuki being of the value of Kshs.72,348.48/=.
2. The appellant pleaded not guilty to the charge and the matter was heard and determined. He has preferred an appeal against the findings of the trial court on the grounds that:
 1. The learned trial magistrate erred in law and fact by failing to protect the constitutional rights of the appellant to a fair trial contrary to article 50(2) of *the Constitution*;
 2. The learned trial magistrate erred in law and fact by failing to consider that the appellant was a first offender and that he did not know the language of the court since no one was translating the language being used in court; and
 3. The learned trial magistrate erred in law and fact by failing to consider the tenets of fair trial and that the appellant's constitutional rights were derogated.



3. At the trial, PW1 Maganda Njuki, the complainant stated that on the day of the incident at around 10am, he heard the sound of a power saw and trees falling. He sent his grandchildren to go and check if the trees were being cut in his compound and they found the appellant and another person directing others to cut down the trees. They were armed with axes, pangas and other weapons and they warned him not to get any closer or else, they would kill him. He stated that he reported the matter to the chief who told him to report to the police who gave him a note to take to the forester.
4. The forester visited the scene where the timber was being transported by a vehicle. Photographs of the scene were taken and the appellant was arrested. He produced documents to prove ownership of the land and he said that 5 trees had been cut. On cross-examination, he stated that there was a case involving himself and the appellant and, in that case, he (PW1) was the accused. That he bought the land from his grandfather and he has a sale agreement to show for it.
5. PW2 was Julieta Kageni, PW1's daughter who stated that she was at home when she heard the sound of a power saw in her father's compound. That she went to check and then informed PW1 that there were people cutting down his trees. She said that she went to a nearby hill from where she saw many people including the appellant and they were cutting the trees while being armed with pangas, rungas, and axes. That she told PW1 about it and then later, she recorded her statement at Kiritiri Police Station. That there was a pending land case at the time of the incident but the land belongs to PW1.
6. PW3 was PC Geoffrey Simiyu of Kiritiri Police station who stated that the matter was reported at the station by PW1 and he referred it to the forest department for assessment of damage. That he visited the scene and he saw that several trees had been cut down from one side of the land. That he recorded the statements from the witnesses and the complainant, who also produced a copy of the title deed for the land. The appellant was arrested in connection with the offence and he was charged. He produced the report of damage by the forester as evidence. On cross-examination, he stated that the timber was not found at the scene and no exhibits were recovered.
7. At the close of the prosecution's case, the appellant was placed on his defense.
8. DW1, the appellant, denied the charge he is facing and stated that he did not steal any wood. He said he was implicated and that the allegedly stolen wood was not produced in court.
9. This appeal was canvassed by way of written submissions.
10. The trial court found the appellant guilty of the offence and sentenced him to pay a fine of Kshs.100,000/=, in default 4 years imprisonment.
11. The appeal herein was canvassed by way of written submissions.
12. The appellant submitted that the charge is a fabrication as the grandchildren of the complainant were not called as witnesses in the case. That from the top of a hill, it would not have been possible for PW2 to clearly identify him as part of the group that was felling trees. He submitted that there is bad blood between him and the complainant, which is why he implicated him in this offence. That it is suspect that the complainant failed to go to check when he heard the sound of the power saw but instead, he sent his grandchildren. He argued that the sentence imposed by the trial court goes against Article 22 of *the Constitution* and that it is unfair that his co-accused was sentenced to 2 years in default of a fine but he was sentenced to 4 years in default of a fine. He urged the court to consider that he is a poor man who cannot afford the fine imposed and that it should allow the appeal.
13. The respondent relied on section 334(c) of the Penal Code and stated that the appellant willfully cut down the complainant's trees. There was proof that the land belongs to the complainant and the appellant cut the trees without his consent. It relied on the case of Shadrack Kipchoge Kogo v.



Republic, Criminal Appeal No. 253 of 2003 and stated that the sentence imposed by the trial court is fair and it does not need to be disturbed.

14. The issue for determination is whether the appeal should be allowed.
15. This court is duty-bound to consider the evidence adduced at the trial in order to make a finding. In the case of *Okeno vs. Republic* [1972] EA 32 where the Court of Appeal stated as follows:

“An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya vs. Republic* (1957) EA. (336) and the appellate court’s own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion. (*Shantilal M. Ruwala Vs. R.* (1957) EA. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court’s finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate’s findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see *Peters vs. Sunday Post* [1958] E.A 424.”

16. Section 334 of the Penal Code provides:

334. Any person who willfully and unlawfully sets fire to, cuts down, destroys or seriously or permanently injures -

- (a) a crop of cultivated produce, whether standing, picked or cut; or
- (b) a crop of hay or grass under cultivation, whether the natural or indigenous product of the soil or not, and whether standing or cut; or
- (c) any standing trees, saplings or shrubs, whether indigenous or not, under cultivation,

is guilty of a felony and is liable to imprisonment for fourteen years.

17. The prosecution called evidence to prove their case against the appellant. PW1 stated that when he heard the sound of a power saw, he sent his grandchildren to check if it was coming from within his land and they confirmed that indeed it was his trees being cut. He said that there was a group of people, led by the appellant, cutting down the trees and that they warned him not to move closer. PW2 stated he saw the appellant leading a group of people to cut down the trees. That she saw him from the top of a hill and she also identified him in court. PW3 stated that he arrested the appellant after interviewing the complainant and witnesses.
18. In his defense, the appellant denied any involvement in the incident and he stated that he had been implicated because there was a case he had against the complainant. The appellant did not offer any tangible defense that removed him from the crime scene that day. He merely denied the charges. On this basis, I do agree with the trial magistrate that the appellant indeed went to the scene and cut down the complainant’s trees.
19. The maximum sentence provided for the offence of cutting down trees contrary to Section 334(c) of the Penal Code is fourteen (14) years imprisonment. The sentence of a fine of Kshs.100,000/= in default 4 years imprisonment was imposed by the trial court was within the law and by any standards, it was lenient even considering that the applicant was a first offender. The offence is a felony and it carries a custodial sentence. It is my view that the sentence was not imposed in a manner that is unfair.



- 20. Lastly, the appellant stated that he did not understand the language used at the trial. From a perusal of the proceedings, I have found that the trial magistrate documented the language used at every stage and that the appellant had a chance to cross-examine the prosecution witnesses. I do not think he failed to understand the proceedings as he claimed since he fully participated in the trial and he himself also testified.
- 21. Therefore, the appeal lacks merit and it is hereby dismissed.
- 22. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF DECEMBER, 2024.

L. NJUGUNA
JUDGE

..... for the Appellant

.....for the Respondent

