REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL APPEAL NO.19 OF 2020

JOYCE MKANGULA SAIDI......................APPELLANT

VERSUS

REPUBLIC...RESPONDENT

J U D G M E NT

[1] The appellant, Joyce Mukangula Saidi, was charged before the Resident Magistrate at Busia with destroying crops of cultivated produce, contrary to **s.334** (**1**) of the **Penal Code**, in that, on the 15th April 2019 at Bugengi – Bukhayo West Busia County, destroyed maize crop under cultivation by spraying it with herbicide, the property of John Ndeda Oduori.

[2] After trial, the appellant was convicted and sentenced to pay a fine of ksh.30,000/= or serve six (**6**) months imprisonment in default.

Being dissatisfied with the conviction and sentence, the appellant preferred the present appeal on the basis of the grounds set out in the amended petition dated 29th September 2020 filed herein by **Obura Obwatinya & Co. Advocates.**

[3] The state/respondent opposed the appeal through the learned prosecution counsel, **Mr. G. Mayaba**. The hearing proceeded by way of written submissions filed herein by both parties. These were given due attention and consideration by this court in the light of the grounds in support of the appeal.

[4] As was stated in **Okeno vs. Rep (1972) EA 32**, the duty of a first appellate court is to re-consider the evidence and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witness.

In that regard, the summary of the prosecution case was that the complainant **John Ndeda** (**PW 3**), was at his place of work in Isiolo on the material date when he was informed that the appellant, his neighbour, had sprayed chemical on his maize crop thereby causing it to wither.

[5] The maize had been planted in the complainant's farm situated in the Bugengi area near Korinda prison within Busia County. Nicholas **Wesonga Barasa** (**PW 1**) and **David Mangeni Ebu** (**PW 2**) were on the material date at 6.00p.m. near the farm grazing their cattle when they spotted the accused spraying chemical on the maize. They suspected that the accused was up to no good and notified the complainant accordingly.

[6] The matter was reported to a village elder and the area chief who referred it to an agricultural officer, **Martin Shikuku Nahama** (**PW 4**). The officer carried out an assessment of the affected maize crop and prepared a report dated 18th April 2019 (**P.Ex 3**)showing the chemical used in the spraying of the crop was a herbicide which caused it to wilt. The value of the damaged crop was placed at ksh.20,590/=

[7] Ultimately, the matter was reported to the police and after necessary investigations carried out by **PC Mohammed Hussein** (**PW 5**) based at Korinda patrol base, the appellant/accused was arrested and charged with the present offence which she denied.

[8] The defence case was an affirmation of the appellant's denial and a contention that she did not destroy the complainants crop as alleged and was on the material date asleep at her home due to a headache. She contended that she knew nothing about chemicals or herbicides and that she was never found carrying out the alleged spraying nor was she spraying tool (**knapsack**) recovered from her. She implied that she was framed by her neighbours due to an existing land dispute between themselves.

[9] The trial court considered both the prosecution and defence case and concluded that the case against the appellant had been proved beyond reasonable doubt. The appellant was therefore convicted and sentenced accordingly.

In convicting the appellant, the trial court stated thus:-

> **"……….However, from the evidence on record, the accused person was actually seen by PW1 and PW2 spraying the complainant's maize crop ………………………………………………. On cross examination by the prosecution counsel, she stated that indeed their land borders that of the complainant and that she was aware that the complaint had planted maize in his land.**"

[10] The trial court further stated that:-

> **"she equally alluded to an existing land dispute and court cases regarding their land parcels. PW 4 also corroborated the destruction by production of a report that showed that the symptoms on the damaged maize stalks were consistent with herbicide use. He confirmed this by stating that normally, crops start wilting from the leaves downwards following herbicide use. It also pricks my conscience that this could have actually triggered the accused to act as she did. She also said that there was no grudge between her, PW1 and PW2. Thus there was no reason for them to give any false testimony against her. Accordingly, I have no doubt in my mind that it is actually the accused person who destroyed the said crop. She was seen by PW1 and PW2 at about 6.00p.m when there was sufficient light to identify her. She also didn't dispute that they are well known to her."**

[11] Having carefully considered the evidence availed before the trial court, this court would have no reasons to depart from the findings of the trial court repeated verbatim hereinabove. These were essentially based on the credibility of the witnesses for which the trial court was in a better position to make as it heard and saw the witnesses.

[12] The appellant's conviction was therefore proper and sound and is hereby affirmed. The sentence meted out by the trial court was lawful but rather lenient in the circumstances as the offence carries with it a maximum sentence of fourteen (**14**) years imprisonment. The respondent has herein called for an enhancement of the sentence, but considering that the appellant is a naïve single mother as may be deciphered from the probation officer's report presented to the trial court, this court does not consider it appropriate to enhance the sentence.

[13] After all, the complainant and the accused/appellant are neighbours. They must live or be made to live peacefully and harmoniously as such. Any enhancement of the sentence would only exacerbate their already fractured relationship. They must learn to "**live and let live**" and not to "**live and let die**".

For all the foregoing factors and reasons, the appellant's grounds of appeal are unsustainable for want of merit. Grounds 5,7,8 and 9 in particular were absolutely irrelevant and to say the least, contemptuous.

[14] In sum, this appeal must and is hereby dismissed in its entirety.

Ordered accordingly.

J.R. KARANJAH

J U D G E

[**DELIVERED & SIGNED THIS 21ST DAY OF OCTOBER 2021]**