



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MAKUENI
CRIMINAL APPEAL NO.39 OF 2017

JOSEPH MUTHIANI MUTISO.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The Appellant was charged with the following offences:-

- i. Stealing Contrary to Section 275 of the Penal Code.** Particulars Are that on the **17th day of March 2014** at Kilala Sub-location, Kilala Location in Makueni District of the Makueni County, stole Acacia Seyal, Croton Megalocarpus trees; all valued at Kshs.19,064.15/= the property of Daniel Kimeu Mbuvi.
- ii. Malicious Damage to Property Contrary to Section 339(1) of the Penal Code.** Particulars Are that On the 17th day of March 2014 at Kilala Sub-location in Makueni district of the Makueni County, willfully and unlawfully damaged 45m length life fence, maize plants and grass, poles of croton of Macrostachys trees all valued at Kshs.40,600/= the property of Daniel Kimeu Mbuvi.
- iii. Trespass Upon a Private Land Contrary to Section 3(1) of the Trespass Act Cap 294 Laws of Kenya.** Particulars are that on the 17th day of March 2014 at Kilala Location in Makueni District of the Makueni County, trespassed upon a private Land Number Ukia/Kilala/378 the property of Daniel Kimeu Mbuvi.

2. After trial, he was convicted and sentenced to serve in Count 1 and 2 three years imprisonment each and he was conditionally discharged under Section 35(1) of the Penal Code in Count III. This was on 24/12/2015.

3. Being aggrieved by the above decision, the Appellant lodged an appeal and set out five grounds of appeal namely:-

- i. He pleaded not guilty.**
- ii. The charge was fueled by grudge and malice.**
- iii. The court relied on witness who had score to settle with him.**
- iv. The case was not proved beyond reasonable doubt.**

v. He did not understand the proceedings.

4. Subsequently he lodged grounds titled mitigation for leniency. During the hearing on 19/04/2017 he abandoned his earlier grounds of appeal and opted to deal with issue of the sentence and relied on his mitigation namely:-

1) ***THAT***, he a first offender hence I pray for leniency.

2) ***THAT***, he is deeply remorseful, repentant and regret my act.

3) ***THAT***, he was fully rehabilitated and reformed through the prison rehabilitation programs.

4) ***THAT***, he has learned the values of honesty, patience and hard work.

5) ***THAT***, he prays to this Honorable Court to reduce or treat the period spent in custody as a punishment already and reduce the sentence to the time served.

6) ***THAT***, he promises to carry on the newly found virtues to society.

7) ***THAT***, he prays to this Honorable Court to issue any other orders it deems fit in his circumstances which he promises to abide by.

5. The state counsel Mr. Orinda proposed that his sentence be suspended and he be awarded a conditional release under Section 35(1) of the Penal Code as the dispute revolves about the land which he disputes it was sold.

6. The court has gone through the record and perused the parties' submissions.

7. The court has also perused the previous records of the Appellant and noted that even the Trial Court gave a conditional discharge in one of the counts the appellant was facing.

8. The court will give the Appellant a chance to go back home as he avers that he has reformed.

9. The court therefore makes the following orders:-

1) The sentence in Count 1 and 2 is suspended and Appellant released on condition that he does not commit a similar offence within a period of 12 months.

SIGNED, DATED, AND DELIVERED AT MAKUENI THIS 24TH DAY OF APRIL, 2017.

C. KARIUKI

JUDGE

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