



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL CASE NO 239 OF 2013

IGNATIUS MACHARIA KAMAU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal against Conviction and Sentence in Murang'a PM Criminal Case No 436 of 2011 – J. Wekesa, RM)

J U D G M E N T

1. The Appellant **Ignatius Macharia Kamau** was on 31/01/2012 convicted after trial, in count one, of **cutting down crops of cultivated produce** contrary to **section 334(a)** of the **Penal Code**, and in count two, of **creating a disturbance in a manner likely to cause a breach of the peace** contrary to **section 95(1) (b)** of the Penal Code. The particulars in count one were that on 19/01/2011 at about 5.00 p.m. at Ikuyu village in Murang'a County, he wilfully and unlawfully cut down crops of cultivated produce, namely 172 maize plants, 48 stems of banana, 15 cassava plants and 7 paw-paw plants, all valued at KShs 102,084/00, the property of one **Zakaria Muiruri Manyeki**. In count two it was alleged that at the same place and time he created a disturbance in a manner likely to cause a breach of the peace by threatening to cut the same complainant while armed with a panga. He was fined respectively KShs 20,000/00 (in default to serve 2 years imprisonment) and KShs 1,000/00 (in default to serve 6 months imprisonment). He paid the fines.
2. He has appealed against both conviction and sentence. The sum effect of his grounds of appeal is that the prosecution case as placed before the trial court was not sufficient to justify the convictions, on account of contradictions in the testimonies of the witnesses and unmerited rejection of his defence.
3. Learned Prosecution Counsel supported the convictions. She submitted that disputed ownership of the land where the destroyed crops were growing was not an ingredient of the offence; that the evidence placed before the trial court established beyond reasonable doubt that the Appellant cut down the crops set out in the charge; that in any case he admitted doing so; that the police visited the scene and saw the destruction done by the Appellant; and that an agricultural officer valued the destroyed crops. Likewise, further submitted learned Prosecution Counsel, the offence in count two was proved beyond reasonable doubt.
4. I have read through the record of the trial court in order to evaluate for myself the evidence adduced and arrive at my own conclusions regarding the same. This is my duty as the first appellate court. I have, however, borne in mind the fact that I did not myself see and hear the witnesses testify, and I have given allowance for that fact.
5. The totality of the evidence placed before the trial court established that the land where the crops that

were destroyed were growing belonged neither to the complainant nor to the Appellant (or his mother before him) but to **Kenya Railways Corporation**. It would appear that various people cultivated along the railway line at the sufferance of Corporation.

6. The available evidence also suggested that some years back the particular portion of land where the destroyed crops were growing used to be cultivated by the Appellant's mother, and some of the perennial crops (bananas, fruit trees, etc.) growing thereon may have been planted by her. She had stopped cultivating, apparently on account of age, and the complainant (PW1) then took over the land. It further appears, from the available evidence that the Appellant subsequently laid claim to the land on account of his mother having cultivated the same for many years, and his quarrels over the land with the complainant then started.

7. However, the testimonies of the complainant, PW2 and PW3 established beyond reasonable doubt that at the time of commission of the offence the complainant was cultivating the land, and that the crops that were destroyed were his.

8. The testimonies of the three witnesses also established beyond reasonable doubt that on the material day and time the Appellant confronted the complainant over his cultivation of the land and threatened to do him harm. When the complainant escaped the Appellant vented his anger upon the complainant's crops of cultivated produce and did considerable damage as evidenced by the valuation placed before the court by PW5.

9. Upon my own evaluation of the evidence placed before the trial court, I am satisfied that the Appellant was convicted upon good and sound evidence, including his own admission that he cut down the crops. His defence was rightly rejected. I find no merit in the appeal against conviction. It is dismissed. As for the sentence, the Appellant got off very lightly. It is not surprising that he has not complained about the sentence.

10. In the event this appeal is dismissed in its entirety. It is so ordered.

DATED, SIGNED AT MURANG'A THIS 23RD DAY OF JULY 2015

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 24TH DAY OF JULY 2015