



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 179 OF 2011

TANDL JOSEF APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original acquittal in Criminal Case No. 539 of 2009 of the Senior Resident Magistrate's Court at Kilifi – Hon. A.M. Obura - SRM)

JUDGMENT

The appellant prays that this court be pleased to quash the decision of the Learned magistrate of acquitting him under section 215 of the Criminal Procedure Code and substituting the acquittal with dismissing the charges and charging the Complainant. In the first case this appeal should not have been admitted for hearing.

The Appellant had been charged with creating disturbance in a manner likely to cause a breach of the peace contrary to section 95(1) of the Penal Code.

The case went to full hearing and the Accused was rightfully acquitted. It is noted that there was a misunderstanding between himself and the Complainant. The trial magistrate did note that the Appellant and the Complainant had a dispute over ownership of a Bar.

That dispute should be subject of Civil Litigation but not an appeal to this Court. He was found innocent. The state has not appealed against his acquittal and the prayers he is seeking are not available.

The appeal has no merit and its disallowed.

Judgment read and delivered in open court this 18th day of September, 2013.

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M. MUYA

JUDGE

18TH SEPTEMBER, 2013

In the presence of:-

State Counsel Miss Ogwen

Appellant present

Court clerk Musundi