



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**

**Criminal Appeal 102 of 2007**

REPUBLIC ..... APPELLANT

VERSUS

JOSEPHINE MUTHONI ..... RESPONDENT

*(Being an appeal against the judgment of Mrs. M.S.G. Khadambi SRM in the Meru CMCC Criminal Case No. 4446 of 2003 delivered on 20<sup>th</sup> December 2009)*

**JUDGMENT**

The respondent in this appeal was charged with the offence of creating disturbance in a manner likely to cause a breach of the peace contrary to section 95 (1) (b) of the Penal Code. That is in respect of the first count. In the 2<sup>nd</sup> count, the appellant was charged with the offence of causing malicious damage to property contrary to section 339 (1) of the Penal Code. After trial before the lower court, the respondent was acquitted on both counts under section 215 of the Criminal Procedure Code. The attorney general has filed this present appeal against that decision. The Attorney general in the petition of appeal relied on two grounds:-

1. ***That the learned honourable magistrate erred in law by dismissing the prosecution's case against the weight of evidence.***
2. ***That the learned honourable magistrate erred in law by dismissing the prosecution's case on account that there was a land dispute between the parties without any evidence to support such contention.***

When the appeal came for hearing, the learned state counsel Mr. Kimathi did not make submissions in support of the same. He requested the court to write its judgment. Section 348A of the Criminal Procedure Code provides the right of appeal to the Attorney General against an acquittal. That section provides as follows:-

***“348. A When an accused person has been acquitted on a trial held by a subordinate court, or where an order refusing to admit a complaint or formal charge, or an order dismissing a charge, has been made by a subordinate court, the Attorney General may appeal to the High Court from the acquittal or order on a matter of law.”***

The Attorney General by that section has a right to appeal on a point of law. Looking at that limitation, the state should have submitted in support of the appeal to show what points of law they relied on in support of this appeal.

According to the prosecution's case, the respondent cut the complainant's bananas and branches of avocado tree which was said to have been on the complainant's shamba at Buranjiru. When the complainant asked the respondent why she was doing so, the complainant stated that the respondent tried to cut her with a slasher. At that time, the respondent was said to have been in the company of her two sons. As a result of her threat to cut her, the complainant PW3 and 5 run away screaming. It was clear from the cross examination which was directed to the

prosecution witnesses that there was a dispute on the ownership of the land in question. The complainant although she did not give the title number of the land stated that it was purchased by her husband. The respondent in evidence said that the land in question belong to her family. It became clear from the proceedings that the land had not been adjudicated. The lower court in its judgment found that the complainant had failed to verify her ownership of the land. The court finally found that there was no evidence that the crops were damaged and if damaged the court found that there was no prove that they belonged to the complainant. Bearing in mind the limitation placed on the Attorney General when such an appeal is filed, the Court of Appeal in the case Paul Kobia M'Ibaya Vs. Republic

Republic Criminal Appeal Case No. 267 of 2003 stated:-

***“We recognize that what constitutes a question of law or point of law for purposes of an appeal to the superior court would ultimately depend on the nature of the determination by the subordinate court and will vary infinitely from case to case. In some cases, the point of law can be gleaned from the decision without much a do.”***

Bearing that decision in mind, I find that the present appeal has no merit because the grounds relied upon did not constitute an appeal on points of law. The learned trial magistrate made a finding of fact and considering the evidence adduced by the prosecution this court cannot say that the learned magistrate reached a conclusion on the evidence which no court properly directing itself could reach. See the case Paul Kobia M'Ibaya Vs. Republic (supra). This appeal therefore is dismissed.

Dated and delivered at Meru this 8<sup>th</sup> day of October 2010.

**MARY KASANGO**  
**JUDGE**