

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 299 of 2000

MARY NDUTA JUMA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from original Judgment and Conviction in District Magistrate's Court at Wanguru in Criminal Case No. 621 of 1999 dated 14th August 2000 by Mr. S. M. Juma – D.M.I)

J U D G M E N T

Mary Nduta Juma (hereinafter referred to as the appellant) was tried and convicted by the District Magistrate's Court at Wanguru for the offence for Forcible Detainer contrary to section 91 of the Penal Code.

It was alleged that between 27th August 1999 and 25th September at Unit 8 in Kirinyaga District being in possession of Rice field No. 1600 of National Irrigation Board Mwea, without any colour of right held possession of the said land in a manner likely to cause a breach of peace against Eunice Wamiru Kuira who was entitled by law to such land.

The trial magistrate having heard 4 witnesses for the prosecution and 3 witnesses for the defence believed and accepted the prosecution evidence that the licensee of Rice field No. 1600 is the complainant Eunice Wamiru Kuira who inherited it from her late husband Kamau Njoroge and that the appellant who was a sister to Kamau Njoroge in collaboration with some villagers forcibly took possession of the rice field and transplanted rice seedlings and prevented the complainant from having access to the said Rice field. He rejected the alibi defence of the appellant and found that she was not in Kiambu but was actually in the Rice field on the material date.

The appellant brought this appeal through Ndumu Kimani advocate who despite having been duly served with a hearing notice failed to attend court.

In the petition for appeal, the appellant contended that the offence was not proved beyond reasonable doubt, that there was contradictory evidence, and that the trial, magistrate erred in finding that the appellant was on the disputed land. It was also the charge was fatally defective.

I have carefully reconsidered and evaluated the evidence and I am satisfied that there was sufficient evidence in support of the misdemeanour of forcible detainer, as at the material time the appellant was in actual possession of the Rice field No. 1600, she had no right to be in the Rice field or to prevent the complainant who was the person entitled by law to the Rice field No. 1600 to access the same and cultivate the rice field.

I find that the charge was proper and that there was sufficient evidence to support the charge. The sentence imposed upon the appellant was not so manifestly excessive as to warrant the in the intervention of this court.

Accordingly I find no substance in this appeal and do dismiss it in its entirety.

Dated signed and delivered this 7th day of December 2006.

H. M. OKWENGU

JUDGE