

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL APPEAL NO.405 OF 2002

(An appeal from the original Conviction and Sentence of M. Maundu Resident Magistrate Wang'uru dated 13/9/02 in Criminal Case No.597 of 2002)

JOHN NJERU NYAGA.....
APPELLANT

VERSUS

REPUBLIC.....
.....RESPONDENT

J U D G M E N T

John Njeru Nyaga hereinafter referred to as the Appellant was jointly tried with 12 others by the Resident Magistrate Wang'uru for the offence of Trespass upon Private Land Contrary to Section 3(1) as read with Section 11 of the Trespass Act Cap 294 Laws of Kenya.

It was alleged that the Appellant and his colleagues without reasonable cause trespassed into Land/Plot Registration Number Mwea/Tebera/B/1238 belonging to Sylvester Munyi Muruwa Nyamu by ploughing and planting rice without the authority of the owner. The Appellant and his Co-Accused were all convicted and each sentence to pay a fine of Kshs.500/- in default to serve two months imprisonment. They were further ordered to cease forthwith from trespassing on the Complainant's land.

The appellant through his advocate brought this appeal contending that the trial Magistrate erred in holding that He was a squatter on the questioned land and in entertaining an entirely civil dispute in a criminal forum. He therefore urged the court to quash his conviction and set the sentence aside. The hearing of this appeal proceeded exparte as the appellants advocate failed to attend court despite having been duly served with a hearing notice.

The learned State Counsel has urged the court to dismiss the appeal contending that there was sufficient evidence to sustain a conviction.

I have reconsidered and evaluated the evidence. The complainant Sylvester Murungi Muruwa Nyamu (P.W.1) produced evidence that He had bought the land in question. This was confirmed by the Land Registrar Peterson Douglas Ngulu who confirmed that according to their records the disputed land was registered in the name of Munyi Murua Nyamu. Although there was some slight disparity in the names the Complainant maintained that He was the same person referred to as Munyi Murua Nyamu even though his Identity Card showed his names,

as Munyi Muruwa Gakuthia. It is not unusual for persons particularly of african origin to have so many different names. Moreover P.W.3 Jeremiah Nyaga Kamau confirmed that He knew the parcel of land in dispute as belonging to the Complainant.

It is evident that the Accused and his colleagues trespassed on the land as they did not have authority from the owner of the land to plough the land .

I find that there is no merit in this appeal and I do therefore dismiss it in its entirety.

Dated, signed and delivered this 30th day of May 2005.

H. M. OKWENGU

JUDGE