



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

Criminal Appeal 67 of 2004

JUSTUS KARISA KALUME.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant initially faced three counts and was tried for all the three counts. He was, however, acquitted of Counts 2 and 3 relating to the offences of malicious damage to property and destroying crops of cultivated produce. After a full trial the appellant was convicted and sentence to a fine of Kshs. 25,000/= or in default to serve 18 months imprisonment. It is against the conviction and sentence that he has appealed.

I am bound, being the first appellate Court, to review the evidence before the trial Court, before making an independent finding always bearing in mind the position of advantage that the trial Court was in when receiving evidence direct from the witnesses. The complainant, Mohamed Nasor Abdalla (PW 1) told the Court that he brought the land in dispute on 28th March, 2001 from one Nyiro Wanje for Kshs. 55,000/=. After concluding the sale, he fenced the land. Six months after this the appellant approached the complainant to allow him settle on part of the said land. When the complainant declined to grant permission, the appellant, moved in and settled on the complainants land. Attempts to evict the appellant failed as he became violent threatening to cut the complainant and insulted him.

The appellant destroyed structures on the land. The matter was reported to the police and the appellant arrested and eventually charged. Nyiro Wanje (PW2) on his part confirmed having brought the disputed land from one Fibi Fondo Gona for Kshs. 51,200/= in 1999. He subsequently sold it to the complainant. According to the appellant's defence, he was born on the disputed land.

While serving a jail term, adjudication exercise was concluded and the land in dispute allocated to the mother of Daudi Karabu. His search at the Land's registry revealed in the mane of Fibi Fondo. The appellant has challenged his conviction and sentence arguing;

- i) that the trial Court relied on a single witness whose evidence did not meet the standard of proof
- ii) that the sentence was excessive and harsh &
- iii) that the trial Court failed to consider his defence.

In law there is nothing wrong with the evidence of a single witness – unless circumstances of identification are shown to have been difficult and did not favour accurate identification. In such a case,

there is need for the Court to look for other evidence, direct or circumstantial pointing to the guilt of the accused person.

In the case before me, there is no doubt that the appellant was known to the complainant and the two had more than three encounters. The complainant's evidence did not require corroboration. On the question of the appellant's defence, I find no merit in his claim that the trial Court failed to consider his defence. The trial Court gave sufficient consideration to the evidence adduced by the appellant himself, his witnesses and the exhibits produced by the appellant

Regarding sentence, the offence of forcible retention is punishable with imprisonment for a term of two (2) years. The trial Court imposed a fine of Kshs.25,000/= or a term of 18 months imprisonment. This sentence is neither excessive or harsh.

I find no compelling reason to interfere with the finding of the trial Court both in convicting the appellant and sentencing him as above

The appeal is dismissed.

Dated and delivered at Malindi this 6th day of September 2005.

W.OUKO

JUDGE

6.9.2005

Judgment delivered

Present Mr.Odhiambo for Mr.Ogoti for the state

Appellant in person

C.C: National Council for Law Reporting

W.OUKO

JUDGE