

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

CRIMINAL APPEAL 142 OF 2003

(Appeal against conviction and sentence of MR. A. K. KANIARU, SRM in Butere Criminal Case No.464 of 2000)

JOHN Z.

ANJIRIAPPLICANT

V E R S U S

REPUBLICRESPONDENT

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J U D G M E N T

The appellant, John Zerubabel Anjiri, was charged before the Senior Resident Magistrate, A. K. Kaniaru in Butere Criminal Case No.464 of 2000 with two counts. The first count was “*Forcible detainer contrary to section 91 of the Penal Code*”. He was acquitted of this count.

The second count was “*Interfering with boundary features contrary to section 24 (1) of the Registered Land Act Cap 300 of the Laws of Kenya*”. The particulars of the charge were: -

“On the 30th day of June, 2000 at Shirere Sub-location Marama South Location in Butere/Mumias District, within Western Province interfered with boundary features by uprooting plants that were planted by lands and surveyors as the boundary of one DANIEL MALOBA land certificate MARAMA/SHIRERE/278.”

The Appellant was convicted on the second count and sentenced to a fine of Shs.5000 and in default six months imprisonment. It is against this conviction and sentence that he appealed.

In his Petition of Appeal the Appellant put forward six grounds of appeal in which, in a nutshell, he submitted that the charge was not proved and that the sentence was excessive and not in compliance with s.24 (1) of the Registered Land Act, Cap 300.

The appeal was argued before the Hon. Mr. Justice Mutitu on 22.9.03 but judgment had not been delivered before he left the bench. The Appellant and the learned State Counsel, Mr. Daud Karuri, both later appeared before me and of their own volition agreed that judgment be delivered by this court on the basis of the arguments recorded before the Hon. Mr. Justice Mutitu and the record of Appeal.

I have perused the Petition of Appeal and the proceedings in the lower court. I am mindful that this being a first appeal, the court is entitled to evaluate the evidence and make its own conclusions and findings bearing in mind that the trial court had vantage position with regard to witnesses who testified before him.

It was the appellant’s submission that the charge against him was defective because it did not stipulate the offence. He submitted that the evidence of the prosecution witnesses was unreliable.

Mr. Karuri, the learned State Counsel, did not support the conviction because the Land Surveyor who visited the land did not give evidence. The report he made was produced by PW6, an ex police officer, one Constable Gachomo. This was hearsay evidence. Without the surveyor’s evidence the charge was

bound to fail. The trial magistrate erred in relying on hearsay evidence to convict the appellant. His finding that the charge was proved was an error.

The appellant was wrongly convicted. I have no hesitation in quashing the conviction, which I hereby do. I also set aside the sentence meted out against the Appellant. If the fine was paid, the money should be refunded. It is so ordered.

Dated at Kakamega this 6th day of October, 2005.

G. B. M. KARIUKI

J U D G E