

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 23 OF 2002

KINYAMU THAMBO APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The Appellant KINYAMU THAMBO was charged with the offence of forcible detainer contrary to Section 91 of the Penal Code in that on the 24th day of June 2001 at Kerereni village Iruma sub-location in Mera location in Meru District being in possession of Kiera/East Magutuni/245 of Mwamba Chabari without colour of right, held possession of the said land in a manner likely to cause a breach of peace or reasonable apprehension of a breach of the peace against Mwamba Chabari who was entitled by the law to be sole possessor.

It was the prosecution's case that the Complainant was the registered owner of a piece of land known as KIERA/EAST MAGUTU/245. He bought this land from the one Mbuiki Thura a relative of the Appellant. The matter was dealt with by the Adjudication Officer, the D.O. and finally the tribunal. Mbuiki Thura also testified as PW 3 and stated that the Appellant was his nephew and he gave him 2 acres of land after the tribunal had declared that the Complainant was the lawful owner of the said land. He had been given 30 days to appeal or to object but the Appellant took no action.

I have evaluated the evidence adduced before the lower court and the defence of the Appellant and I am satisfied that the Appellant was properly convicted. He had no lawful reason to remain on the Complainant's land. I therefore dismiss this appeal. As regards sentence the Appellant was sentenced to serve two years imprisonment, this being below three years he should have been sentenced to Community Service. I therefore set aside the sentence and substitute the same with the term already served. The Appellant to be released forthwith unless otherwise lawfully held.

Dated this day of 2003.

J.V.O. JUMA

JUDGE