



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CORAM: D. S. MAJANJA J.
CRIMINAL APPEAL NO. 75 OF 2018

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION (DPP)....APPELLANT

AND

JACOB MUNIALO.....1ST RESPONDENT

SAUL MUMASI.....2ND RESPONDENT

DAVID INJENDI.....3RD RESPONDENT

SILVANUS LUVONGA.....4TH RESPONDENT

KENNEDY WALWANDA.....5TH RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. M. L. Nabibia, RM, dated 1st April 2017 in Butali Magistrates Court Criminal Case No. 472 of 2014)

JUDGMENT

1. This is an appeal by the Director of Public Prosecutions against a judgment of the trial court acquitting the respondents of the offence of malicious damage to property contrary to **section 339 (1)** of the *Penal Code (Chapter 63 of the Laws of Kenya)* and stealing contrary to **section 275** of the *Penal Code*.

2. From the charge, the property that was destroyed was said to belong to one Nelly Walwanda and Solomon Masitsa but in the evidence, the house belonged to Nelly's parents who were since deceased. When I asked for proof of ownership either directly or by way letters of administration since the property belonged to the deceased, it was not forthcoming. In the circumstances, the charges could not stand on that basis.

3. The respondents ought to have been charged with the offence of intermeddling contrary to **section 45(1)** of the *Law of Succession Act (Chapter 120 of the Laws of Kenya)* and I would venture to say that had this been done, they would have met the full force of the law. I will say no more.

4. The appeal is dismissed. The respondents and sureties are discharged from the proceedings.

DATED and DELIVERED at KAKAMEGA this 2nd day of September 2019.

D. S. MAJANJA

JUDGE

Ms Ombega, Prosecution Counsel, instructed by the Director of Public Prosecutions for the appellant.

Mr Indimuli, Advocate for the respondents