

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL NO 145 OF 1987

KAVITEAPPELLANT

V

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted under section 330 of the Lands Adjudication Act (cap 284 of the laws for uprooting sisal demarcating the boundary of plot No 1377 belonging to one Makau Monewa. He was sentenced to 4 months imprisonment plus a fine of Kshs 1,500.

Appellant counsel complains firstly that the trial magistrate failed to record what was said at the scene by the prosecution or the defence. It is not apparent from the record whether the magistrate visited the scene with a view of conducting a trial threat. Nor is it apparent whether either side wished to record a statement at the scene but was refused by the magistrate. I therefore make no findings on these matters. I am satisfied however that the magistrate went to the scene to satisfy himself as to whether or not the alleged uprooting of sisal had taken place. The record shows that he found the sisal uprooted and was satisfied that it was the appellant who did so. I find no fault with the said visit by the magistrate and the appellant counsel has been unable to satisfy this court as to the precise prejudice, if any, caused to the appellant by the said visit. The appellant counsel complained also that the appellant was initially granted bail but that after the visit to the scene he was remanded in custody and that therefore the trial magistrate was biased against the appellant. When and accused person appears in court in response to summons his bail is at an end on the return date. Thereafter it is within the discretion of the court whether or not to grant any subsequent bail consequent upon adjournment of the case. I am not satisfied that the allegation of bias has been substantiated or can be substantiated by the denial of bail as it is with the powers of the court to grant or not to grant bail. Counsel has referred to the principles in the case of *Tumaini v Republic* 1972 EA 441 at p 444 with which I respectfully agree but am of the view that those principles were not breached by the trial magistrate. I am satisfied on the evidence in the record that the conviction was properly based.

The maximum sentence for the offence charged is a fine not exceeding Kshs 3,000 or imprisonment not exceeding 6 months or both. The sentence of the trial court is not in my view excessive considering all the circumstances of this case and I will therefore a not disturb it.

Consequently the appeal against conviction and sentence will fail and it is dismissed.

July 3, 1987

TORGBOR

JUDGE