

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL 229 OF 1986

NZYUKO..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

August 18, 1987 Torgbor J delivered the following Judgment.

The appellant who had similar previous conviction of personation under section 105(b) of the Penal Code about 5 years ago was fortunate to receive one years' imprisonment. His appeal is dismissed.

The appellant who had similar previous conviction of personation under section 105(b) of the Penal Code about 5 years ago was fortunate to receive one years' imprisonment. His appeal is dismissed. The appellant was convicted for willful damage to property ie maize crops valued at Kshs 500 and sentenced to 6 months imprisonment without the option of a fine.

Upon consideration of the evidence I am of the view that the dispute herein is of a civil nature in that it concerns land and that the proper cause for the magistrate to have taken could have been to refer the land dispute to arbitration or for determination by a competent tribunal.

The evidence did not completely prove either that the complainant owned the land or the maize which was allegedly destroyed by the appellant. On the contrary the appellant gave unsworn evidence and called other witnesses whose testimony strongly suggested that the appellant may have acted under a genuine belief in a claim of right to the disputed property. In the circumstances I do not consider the conviction safe and it is quashed and the sentence of the trial court is set aside.

Appeal is allowed.

August 18, 1987

TORGBOR

JUDGE