



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL REVISION CASE NO. 42 OF 1982

KATUVA MUNYAO.....APPELLANT

VERSUS

EDWARD JACOB.....RESPONDENT

RULING

This case came to the knowledge of this court through a civil appeal by an objector.

Katuva Munyao successfully prosecuted Edward Jacob privately on two counts. In count one, Edward was charged with and convicted of trespass upon private land contrary to Section 3(1) of the Trespass Act (Cap 294). The particulars of offence read:

“Edward Jacob: On October 6, 1979 at about 8.30 am at Kithulani Village, Kiteta Location within Machakos District of the Eastern Province, without lawful excuse entered on land plot No 309 which is the property of Katuva Munyao without his consent.”

In count two, Edward was charged with impairing features of demarcated boundaries contrary to Section 33(d) of the Land Adjudication Act (Cap 284). The offence was committed on October 6, 1979 too. He was convicted on both counts and fined Kshs 150 on count 1 in default to serve two months imprisonment and Kshs 400 on count 2 and in default of paying the fine to serve three months’ imprisonment. He paid the fines.

After the court had read the judgment, Mr Makau, who conducted the prosecution for the complainant, said:

“I am applying for the complainant to be awarded his costs.”

The following order was made:

“Order Costs of this case to the complainant.” Both the Penal Code (Cap 63) and the Criminal Procedure Code (Cap 75) empower the subordinate courts and the High Court to award costs to a public or private prosecutor or to the accused in a criminal case. Section 32 of the Penal Code (Cap 63) provided as follows: “Subject to the limitations imposed by Section 171 of the Criminal Procedure Code, a court may order any person convicted of an offence to pay the costs of and incidental to the prosecution or any part thereof.”

Such costs are limited by Section 171(1) of the Criminal Procedure Code (Cap 75) which says this:

“A judge of the High Court or a magistrate of a subordinate court of the first, second or third class

may order a person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as the judge or magistrate may deem fit, in addition to any other penalty imposed: Provided that such costs shall not exceed two thousand shillings in the case of the High Court or five hundred shillings in the case of a subordinate court.”

A subordinate court has powers to award costs not exceeding Kshs 500. In this case where the District Magistrate awarded unspecified costs, they were later purported to be taxed by consent of the parties at Kshs 4,137. There is no provision for taxation of costs awarded in a criminal matter under the Criminal Procedure Code (Cap 75). The District Magistrate awarded costs beyond his jurisdiction. Costs in a criminal case cannot be at large. The court must not only award a sum that to it seems fit but it must specify the sum awarded in the conviction or order. Thus Section 174 of the Criminal Procedure Code (Cap 75) provides as follows:

“(1) Sums allowed for costs awarded under Section 171 shall in all cases be specified in the conviction or order.”

The requirement to specify the sum awarded being statutorily mandatory, failure to specify such a sum in the conviction or order is fatal to the award as it renders the award null, void and of no effect. As the District Magistrate’s order awarding costs did not specify the sum awarded as required by law, it is a nullity and is set aside in exercise of the powers conferred upon the High Court under Section 364(1) of the Criminal Procedure Code (Cap 75).

Order accordingly.

Dated and delivered at Nairobi this 25th day of October, 1982.

Z.R CHESONI

JUDGE