



**Republic v M’mburi (Criminal Case E604 of 2023)
[2024] KEMC 115 (KLR) (21 March 2024) (Judgment)**

Neutral citation: [2024] KEMC 115 (KLR)

**REPUBLIC OF KENYA
IN THE GITHONGO LAW COURTS
CRIMINAL CASE E604 OF 2023
AT SITATI, SPM
MARCH 21, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

MWIRIGI M’MBURI ACCUSED

JUDGMENT

1. The accused person denied the single count of malicious damage to property contrary to section 339(1) of the [Penal Code](#). The particulars were that on 27th October, 2023 at Riiji village, Katheri East Location within Imenti Central Sub-County of Meru County he wilfully and unlawfully damaged maize plantation valued at Kshs 35, 000/= the property of Martin Kimathi Murithi.
2. The accused person represented himself at the trial which was conducted by prosecution counsel Kimathi Kibiti while the accused person represented himself at the trial.

The Dpp’s Case

3. PW1 Martin Kimathi Mureithi told the court that on 27th October, 2023 at 5pm he received a call from his brother Wilson Kithinji alerting him that their neighbour was in his maize plantation wreaking havoc. PW1 stated that he owned LR. Abothuguchi/katheri/5172 and had planted maize on it.
4. Upon receiving the report, PW1 visited the scene and found that the maize plantation had been uprooted. He then recalled that a few days earlier, his neighbour who is now the accused person had verbally threatened him with uprooting the maize plantation and he had actually lodged the report of threats at Githongo Police Station vide OB06/09/2023 and 015/24/08/2023.
5. Following the damage, the complainant reported to the police who photographed the scene and arrested the suspect was arrested. A crop assessment damage report was then prepared by the Agricultural Officer.



6. PW1 added that the accused person had been using a false pretext of ownership of the land to wreak havoc yet PW1 had legally purchased the land from the accused's niece Catherine Kinya Thurania. He explained that Catherine was the daughter of the accused's sister Joy Mwendo Thurania. The subject land was adjudged as the inheritance of the said Catherine Kinya Thurania from her deceased father who was the accused person's brother but the accused was resisting her inheriting from her deceased father. He added that after the succession proceedings were concluded the said Catherine took up the inheritance and evicted the accused person from her land as per the court orders.
7. PW1 told the court that the accused person had previously damaged his crops and charged in 4 previous criminal cases where he was charged in court as follows:
 1. CR E017 of 2020 – malicious damage of uprooting flowers.
 2. CR E045 of 2020- malicious damage but acquitted.
 3. CR 472 of 2020 malicious damage but was acquitted.
 4. CR E546 of 2021 - malicious damage of uprooting maize where he was convicted and sentenced to a fine of Kshs 20,000/= in default 6months imprisonment.
8. In cross-examination, the following came to light:
 - i. PW1 had previously been charged for assaulting the accused person but he pleaded that he did so in self defence.
 - ii. The subject parcel was not Abothuguchi/katheri/1410 but it was Abothuguchi/katheri/5172.
 - iii. It was the High Court in the Succession Cause that determined that Catherine was to inherit from her father's estate.
 - iv. The complainant's land shared a common boundary with the accused person's land.
 - v. PW1 had tried to negotiate peace with the accused person but the accused person rejected the peace offer.
9. In re-examination, PW1 affirmed that he lawfully purchased the land from Catherine who is a daughter to the accused person's deceased brother.
10. PW2 Lawrence Muriungi M'aburia told the court that on 27th October, 2023 he was leaving a nearby farm from casual work when he saw the accused person who was well known to him entering into PW1' farm. On checking our further, he saw the accused person uprooting the maize crops planted by PW1. At that time, PW1's brother was with PW2 and it was the said brother who made a phone call to PW1 alerting him of the incident. After uprooting the crop in their presence, the accused person left.
11. In cross-examination, he confirmed that he has been severally hired as a farm-hand for PW1 to work of PW1's farm. He confirmed that it was at 5pm when the accused person uprooted the maize crops. He pointed out that on a previous date the accused person had committed a similar offence which attracted news coverage by BAITE TV.
12. PW3 Agricultural Officer Morris Koome produced the Crop Damage Assessment report dated 30th October, 2023 as P.Ex.4 showing that the value of the damaged maize plantation was approximately Kshs 35, 000. His testimony was unshaken in cross-examination and confirmed that the crop was completely uprooted.



13. PW5 Wilson Kithinji told the court that he was with PW2 from a farm that he had leased close that of his brother when he saw the accused who was well known to him uproot his brother's maize crops. The 2 did not intervene. PW5 called his brother with the news.
14. The witness told the court that the accused person had been eyeing that land and when he failed to acquire it targeted every crop season to uproot their crops. In cross-examination, the following came to light:
 - i. Catherine sold the land to PW1 after she inherited as a share from her deceased father who was a brother to the accused person.
 - ii. PW5 had never been convicted on any criminal acts or omissions towards the accused person.
15. S/no. 243676 PC Napoya Mustafa as PW4 of Githongo Police Station told the court that he was assigned the case by the OCS to investigate. He recorded the witnesses' statements and had photographs taken of the scene. The scene was also visited by the Agricultural Officer who assessed the crop damage and prepared the report. He then arrested the accused person. He produced the following as exhibits in the case:
 - i. Copy of original title deed Abothuguchi/katheri/5172 registered in the names of the complainant.
 - ii. 3 photographs of the damaged maize plantation.
 - iii. Certificate and report of the photographs.
 - iv. Exhibit memo form for the processing of the photographs.
 - v. Sale agreement between Catherine and PW1.
 - vi. Letter by the Lands Registrar verifying PW1's title deed as genuine.
16. In cross-examination, the following came to light:
 - i. The accused person had been lodging fictitious claims against the complainant and others with a view to cause confusion.
 - ii. The 3 photos were undated.
 - iii. The accused was arrested on 11th November, 2023.
 - iv. The maize farm had no buildings.
17. At the end of his testimony, the DPP closed their case whereupon the court ruled that the accused person had a case to answer and put him to his defence.

The Defence Case

18. DW1 Mwirigi M'mburi gave sworn defence and called no witnesses. He denied the charges. He told the court that he was the real victim as the complainant had entered his land and destroyed his coffee crops. He produced the following as exhibits in support of his defence:
 1. Chief's letter showing that the accused person was the Administrator of the estate.
 2. Crop Damage letter by the agricultural officer.
 3. P3 Form showing that he was allegedly attacked and injured by the complainant.



4. O.B. Entry dated 8/24/02/2021.
 5. O.B. Entry 12/31/07/23.
 6. A second P3 form in which the complainant's worker allegedly attacked the accused person.
19. In cross-examination by the DPP the following came to light:
- i. The complainant herein and his worker were acquitted of the charges that he had lodged against them.
 - ii. He admitted that he had no title deed to the subject land.
 - iii. He admitted that it was true that he entered the subject land on the material date.
20. At that stage the accused person closed his defence. The duty of this Honourable Court is to determine if the DPP has proved the charges beyond any reasonable doubt.

Issue For Determination: Elements Of Malicious Damage

21. The elements of the offence of malicious damage to property were extensively set out by the High Court in the case of *Republic v Robert Kaibi Baraba* [2020] eKLR (F. Gikonyo J.) where the learned Judge held as follows:

Elements of the offence

15. According to Section 339(1) of the *Penal Code*:
“Any person who willfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanour, and is liable, if no other punishment is provided, to imprisonment for five years.”
16. I am content to state that, elements of the offence of malicious damage to property under section 339(1) of the PC were stated in the case of *Simon Kiama Ndiagui vs. Republic* (2017) eKLR, as follows-
“In order to convict the court must be satisfied that, first, some property was destroyed; second, that a person destroyed the property; third that the destruction was willful and therefore there must be proof of intent; and fourth, the court must also be satisfied that the destruction was unlawful.
17. In the same case (ibid), the Learned Judge stated that: -
“I cannot find any suggestion in this provision that ownership of the destroyed property must be established for liability to attach. My take on this issue is that ownership of the property is a relevant but not the defining factor; it may be taken into account amongst other evidence that tends to establish that the offence was committed. It follows that failure to prove ownership is not fatal to the prosecution case and to this extent I agree with the learned counsel for the state.”
18. In *Republic vs. Jacob Mutuma & another* (2018) eKLR, the rationale for not tying down the offence of malicious damage to property to proof of ownership of the property was explained in the following terms –



‘In my view, it is not difficult to see why the offence is not necessarily tied down to ownership of particular property. It is to prevent wanton destruction of property that may lead to lawlessness and people taking the law into their own hands.’”

2. On this charge, the evidence is direct and overwhelming so much that the accused person admitted as much in his defence. In the result, he is found guilty as charged and is convicted under section 215 of the *Criminal Procedure Code*. From the history of the case and the surrounding circumstances, it was proved that the accused person had never accepted that his deceased brother’s daughter could inherit instead of himself and he was hell-bent to ensure that even purchasers of that share never have peace. Right of appeal is 14 days.

DATED, READ AND SIGNED AT GITHONGO LAW COURTS THIS 21ST DAY OF MARCH, 2024

HON.T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

GITHONGO LAW COURTS

Present

DPP Kibiti

Ronny And Brian Court AssistantS

Accused Person

