



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: CHERERE -J)

CRIMINAL APPEAL NO. NO. 127 OF 2020

BETWEEN

REPUBLIC.....APPELLANT

AND

CHARLES KINYUA.....RESPONDENT

(Appeal against sentence in Meru Chief Magistrate's Court Criminal Case No.1902 of 2015 by Hon. E.Mbicha (SRM) on 30.07.2019)

JUDGMENT

1. CHARLES KINYUA (*Respondent*) was charged with cutting down crop of cultivated produce contrary to section 334(a) of the Penal Code Cap 63 Laws of Kenya. The particulars are that on 26.08.2015 at Gikunene village, Appellant willfully and unlawfully cut down crop of cultivated produce namely 60 coffee plants, one mango and one avocado tree valued at Kshs. 633,000/- the property of Monica Mparu

Prosecution case

2. The prosecution called a total of six (6) witnesses in support of its case. Muthuri Barnabas recalled that on 25.08.2015, he was contracted by Appellant to clear a farm by cutting down coffee plants, one mango and one avocado tree which he did and was paid Kshs. 1,200/- for the job. Solomon Kinyua, the complainant's son on 26.08.2015 found Appellant cutting down his mother's coffee trees. That he reported the matter to his mother who asked him to count the damaged trees. That he returned to the farm the following day and confirmed that 60 coffee plants, one mango and one avocado tree had been cut down. Complainant confirmed that the trees that were cut down were on the portion of land that was identified by her late father in law to her late husband. He identified Appellant as son to her husband's brother. PC Gabriel Kosgei upon receiving complainant's report visited the scene of crime on 28.08.2015 and took 10 photographs of the damaged trees. The photographs and certificate were tendered as **PEXH. 3 (a)** and **(b)** respectively. This case was investigated by Sgt Mulwa who upon visiting the scene on 26.08.2015 obtained a report dated 28.08.2015 **PEXH. 2** from Ntima Ward Agricultural Officer who confirmed that 60 coffee plants, one mango and one avocado tree all valued at Kshs. 633,000/- had been cut down. He also tendered a letter **PEXH. 4** by Kianjuri Farmers' Co-operative Society confirming that complainant was its member number 2178. Consequently, Appellant was arrested and charged. He also produced an agreement **PEXH. 1** in which Appellant conceded he had cut down complainant's trees and offered to compensate her.

Defence case

3. In his sworn evidence, Appellant stated that the land in question belonged to his grandfather who had shown each of his sons where to cultivate. He conceded cutting down the trees with the permission of his mother but denied that they on complainant's portion. His witness gave evidence that the trees that were cut were not on complainant's portion.

4. In a judgment dated on 30th July, 2019, Appellant was acquitted of the charges.

The appeal

5. Aggrieved by this decision, the State lodged the instant appeal mainly on the ground that the Prosecution case was proved beyond reasonable doubt.

Analysis and Determination

6. It is a duty to re-evaluate, re-analyze and re-consider the whole evidence in a fresh and exhaustive way before arriving at its own independent decision. (See **Collins Akoyo Okemba & 2 Others vs Republic [2014] eKLR**).

7. I have considered the appeal in the light of the evidence on record, the grounds of appeal and submissions by the State and the Respondent.

8. It is not disputed that Appellant cut down the trees in issue allegedly because they were on the portion of land that his family was entitled to. This was well explained by the complainant and her son and was buttressed by the agreement PEXH.1 in which the Appellant conceded cutting down the trees.

9. The land in issue remains undistributed and the trial court rightly ruled that none could claim ownership to any of the respective portions. The trial magistrate however fell into error when he failed to appreciate that this was not a succession case but a case of damage to crops. The damaged crops belonged to the complainant and the law frowns at a person such as the Appellant who damaged cultivated crops at will.

10. From the foregoing, I am persuaded that the prosecution case against the Respondent was proved beyond any reasonable doubt and that the acquittal was against the weight of evidence. Accordingly, the order of acquittal is set aside and substituted with an order that Respondent is guilty of cutting down crop of cultivated produce contrary to section 334(a) of the Penal Code Cap 63 Laws of Kenya.

11. This matter shall be placed before any other magistrate other than **Hon. E.Mbicha** for mitigation and sentence. It is so ordered.

DATED AT MERU THIS 14TH DAY DECEMBER, 2021

T. W. CHERERE

JUDGE

Appearances

Court Assistant - Mr. Kinoti

For the Appellant - Ms. Mwaniki

For Respondent - Mr. Mutegi Advocate



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