

IN THE HIGH COURT OF TANZANIA
AT Mwanza

(PC) CRIMINAL APPEAL NO. 1 OF 1998

FROM THE DECISION OF THE DISTRICT COURT OF GEITA
DISTRICT AT GEITA IN CRIMINAL APPEAL NO. 41/1997
BEFORE K.M. MRISHO - DM. ORIGINAL CRIMINAL CASE
NO. 265/97 OF NYANKUMBU PRIMARY COURT

EMMANUEL HENERIKO APPELLANT

Versus

MUSSA NONGO RESPONDENT

ORDER

MEMORANDUM

I have gone through the appeal documents in this appeal. The appeal is by the complainant in a case which originated in the primary court. The Republic through Mr. Kabonde, learned Senior State Attorney, duly informed this court on 17/6/98, that the republic had no interest in this appeal, and I discharged Mr. Kabonde.

Upon perusal of the judgement of the District Court in appeal, which judgment is appealed against, I have noted that this appeal is determinable on a point of law: Whether the owner of cattle which enters another persons shamba and eats up crops therein, can be charged with malicious damage to property c/s 326 (1) of the Penal code. The accused/respondent, Mussa Nongo, was charged with malicious damage to property c/s 326 (1) Penal Code, because his cows destroyed cassava and sweet potatoes in complainant's shamba. He was convicted by the trial primary Court, and was sentenced to 12 months imprisonment, plus 122,130/= compensation.

On appeal to the District Court, the said judgment, that is the conviction and sentence, were quashed and set aside respectively. The reason given by the appellate District Magistrate (Mr. Mrisho, Esq. D/M) are in my considered view quite right in view of the law involved. Consequently, I am satisfied that this appeal is without substance, and in terms of section 28(3) MCA, 84, I summarily reject it. Order accordingly.

W. Nchalla
JUDGE