

IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA
PC CRIMINAL APPEAL NO 15 OF 2020

BETWEEN

PETER NYAMHANGA _____ APPELLANT

VERSUS

MAITIRA WESINGE _____ RESPONDENT

(Arising from the decision and orders of the district court of Musoma at Musoma Hon. Mwakihaba RM, in criminal appeal no 4 of 2020 dated 28.02.2020)

JUDGEMENT

10th December 2020 & 29th January 2021

GALEBA, J.

At Musoma urban primary court, the respondent, **Mr. Maitira Wesinge** was charged in criminal case no 603 of 2019 for causing chaos and disturbance at **Mr. Peter Nyamhanga's** rented room located at Nyakato Maziwa within Musoma Municipality resulting into loss of numerous items from the said room. The charge was preferred under **section 89 of the Penal Code [Cap 16 RE 2019] (the Penal Code)**, although there are **section 89(1) and 89(2)** creating different offences and imposing different punishments for the respective offences.

Nevertheless, according to the appellant who was the complainant in the primary court, on 15.09.2019 at night when he came back home from hospital, he found the respondent at his doorstep carrying two padlocks and prevented him from entering into the room. He used the padlocks to lock the door leading to **Mr. Nyamhanga's** room. Because of that he had to look for alternative accommodation for that night. As for the missing items, the appellant when responding to one of the questions asked by an assessor called **Palemo**, he testified that he did not see the respondent carrying the goods nor did he identify the goods to be his. The responder's response to those allegations was a flat denial. The primary court dismissed the case because there was no sufficient evidence that Mr. Wesinge caused any disturbance.

As the appellant was aggrieved, he filed criminal appeal no 4 of 2020 to the district court of Musoma but that appeal was dismissed and the acquittal of the respondent in the primary court was upheld. This appeal is challenging the dismissal of his appeal by the district court.

The appellant raised 5 grounds in the petition, which were **first** that the district court erred because it upheld the hearsay evidence of the respondent who committed the offence but was acquitted and **secondly**

that the district court erred because it dismissed the appellant's appeal for no good reasons and it failed to consider the appellant's evidence which established that the respondent used abusive language, brawling and threatening violence. **Thirdly**, the appellant complained that the trial court failed to convict the respondent although it received evidence that he committed the offences charged and **fourthly** that the trial court dwelt on irrelevancies in the evidence of the respondent. **Lastly** the appellant's complaint was that the trial court erred in disregarding his evidence without giving any reasons.

In arguing the 1st ground of appeal, the appellant submitted that the trial magistrate did not consider his evidence and he considered only the evidence of the respondent. This complaint has no basis because the district court decided the appeal based on the evidence that was received in the Primary court. In the primary court the appellant had a duty to prove the case beyond reasonable doubt against the respondent. However the appellant's testimony there, as far as it related to the events of 15.09.2019, the alleged date of the commission of the offence, was to the effect that when he came home, he found the respondent with two padlocks which he used to lock his room and the appellant had to look for

an alternative place to sleep. This evidence was not enough to convict the respondent of the offence under any sub section of section 89 of the Penal Code. That section provides as follows;

'89. Abusive language, brawling and threatening violence

(1) Any person who—

(a) uses obscene, abusive or insulting language to any other person in such a manner as is likely to cause a breach of the peace; or

(b) brawls or, in any other manner, creates a disturbance in such a manner as is likely to cause a breach of the peace,

is guilty of an offence and liable to imprisonment for six months.

(2) Any person who—

(a) with intent to intimidate or annoy any person, threatens to injure, assault, shoot at or kill any person or to burn, destroy or damage any property; or

(b) with intent to alarm any person discharges a fire-arm or commits any other breach of the peace, is guilty of an offence and is liable to imprisonment for one year and if the offence is committed at night the offender is liable to imprisonment for two years.'

It is the opinion of this court, like that of both the primary and the district court that there is no offence created under the above law that was proved to have been committed by the respondent. There were no abusive words which were uttered by the respondent, there was no demonstration of the manner that the respondent threatened violence or breached the peace. In the circumstances, the 1st ground of appeal is dismissed.

In respect of the 2nd ground **Mr. Nyamhanga** submitted that the appellate court disregarded the evidence of his witness **PW2, Golda Siwa Mkwabe**, who proved that the respondent committed the offence without giving any reasons. In reply to this ground **Mr. Maitira Wesinge** submitted that all the appellant's witnesses evidence were hearsay and hence unreliable. I have considered the arguments of parties and this court has particularly gone through the evidence of **PW2, Golda Siwa Mkwabe** and noted that such evidence related to the events which occurred on 16.09.2019 which was not the day that the offence was alleged to be committed. In this case the offence was alleged to have been committed on 15.09.2019, which means, the evidence of **PW2** is of no use value for purposes of proving an offence which was committed on 15.09.2019. The other witness was **PW3 Dickson Shasha**; this witness witnessed what happened 5 days after the alleged date of the offence. He witnessed what transpired on 20.09.2019. Based on the above reasons, the 2nd ground of appeal has no merit.

I have keenly reviewed the 3rd, 4th and 5th grounds of appeal and clearly those grounds are direct complaints against the decision of the trial primary court and the manner that court handled the trial. These

complaints ought to have been raised and resolved in the district court. This court has no jurisdiction to hear or resolve any complaint by way of appeal in challenging any aspect of a decision of primary courts. In the circumstances this court orders that the complaints in the 3rd, 4th and 5th grounds of appeal are misplaced and the same are struck out.

Based on the above discussion this court makes the following orders;

1. The decisions by both the district court at Musoma and Musoma urban primary court are hereby upheld.
2. This appeal is dismissed and the appellant may appeal to the Court of Appeal of Tanzania according to law.

DATED at MUSOMA this 29th January 2021



Z. N. Galeba
JUDGE
29.01.2021