



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL DIVISION

CRIMINAL CASE NO. 18 OF 2022

(Being Criminal Case No. 91 of 2021 before the Third Grade Magistrate Court sitting at Ntonda)

THE REPUBLIC

V

BIZWICK JEFREY BIZINESI

ORDER ON REVIEW

Chima J

The accused was, in the Third Grade Magistrate Court sitting at Ntonda charged with theft contrary to section 278 of the Penal Code. The particulars of the charge were that the accused in the month of April 2021 at Zonsezi Village in the District of Blantyre stole trees valued at K2, 000, 000 the property of Irene Sawasawa. The accused pleaded not guilty. The complainant's evidence was that the accused cut down trees from her land. When she confronted the accused about this, the accused replied that he had cut down the trees because this was his mother's land. The complainant stated that she only came to know the accused because of this dispute. She has used the land since 1968, having inherited it from her parents. She had reported to the village headman and later the T/A about the damage that the accused had caused to her land by cutting down the trees. The T/A had issued an order to the accused never to come to the complainant's land again but that the accused continued to cut the trees such that now the entire land is bare. The complainant then resorted to report the matter to the police and the accused was thus arrested.

The village headman testified that both the complainant's parents and the accused's parents had asked for pieces of land from the then village headman and they were both granted land. The land of these two parties was adjacent. The accused's father had planted sisal in the boundary between the two pieces of land. Some time back, the accused's brother cut down some trees from the

Sawasawa land. When he was confronted about the issue, he apologised. The village headman stated that there have been disputes concerning the land boundary between the two families. According to the him, the accused cut down the trees that were in the boundary between the two pieces of land.

After the testimony of three witnesses in the matter and the prosecution still remaining to parade three more, the matter was adjourned to another date to enable the other witnesses to come to court. In the meantime, the magistrate forwarded the file to the High Court for directions. The magistrate states that for him to determine the theft charge, he will have to determine first the ownership of the land, and that since this is land over which he has no jurisdiction, he requests the High Court to give directions as to how he is to proceed with the matter. This court is of the firm view that the main issue in the matter is theft and over that the magistrate has jurisdiction. If in determining the question of theft, there is need to determine the question of the ownership of the land, the magistrate needs to proceed and resolve that aspect as well; he cannot lose jurisdiction just because it involves a land dispute. In this matter, the land question is an ancillary issue. By analogy, if the accused was charged with stealing a car that was worth fifty million kwacha and the accused's defence was that this was his car, would the magistrate fail to determine the ownership question because the value of the property is beyond that over which he has jurisdiction in civil matters? That is not the case. Actually, in criminal matters, magistrates do deal with matters involving property worth beyond their jurisdiction in civil matters. So in the present matter, the magistrate should proceed to consider the question of the theft of the trees, and if need be, resolve whose land it was.

Made this day the 30th of May 2022


Chima J