**Alinyo and another v Republic**

**Division:** Court of Appeal at Dar Es Salaam

**Date of judgment:** 27 November 1974

**Case Number:** 34/1974 (23/75)

**Before:** Spry Ag P, Law Ag V-P and Musoke JA

**Sourced by:** LawAfrica

**Appeal from:** High Court of Tanzania – Patel, J

*[1] Appeal – Criminal – Only competent by person convicted – Appellate Jurisdiction Act* (*Cap.* 451), *s.*

8 (*T*).

*[2] Criminal Practice and Procedure – Property – Ownership of – Should be determined by civil and not criminal court.*

**JUDGMENT**

The considered judgment of the court was read by **Law Ag V-P:** These proceedings are described as a criminal appeal from an order made by Patel, J. The appellants were not parties to that case, but claim to be the owners of three motor vehicles seized by the customs authorities at Musoma and tendered as exhibits at the trial. The vehicles were apparently held by the customs authorities under a seizure order made under the Customs and Transfer Tax Management Act as being liable for forfeiture. The trial judge made no order for forfeiture; at the conclusion of the trial he directed that the vehicles should be kept in the custody of the Tanzania Police and he “invited” Job Odengo (the second appellant) to “come and establish a claim over them if he is so inclined. Otherwise they should also be treated as found property.”

Mr. Matemba for the appellants informed us that he has claimed the vehicles from the police on behalf of the lawful owners, and that the police advised him to apply to the court. He accordingly applied by chamber summons in the High Court at Mwanza, supported by affidavits sworn by the appellants as to their ownership of the vehicles. The judge dismissed the application but ordered that the vehicles be released to the customs. The original trial judge did not make a restitution order under s. 179 of the

Criminal Procedure Code, presumably not being satisfied as to the ownership of the vehicles, and we think that Patel, J. was probably right – after being shown the seizure order – in holding that the vehicles should be handed over to the customs authorities at Musoma, and that the question of ownership should be taken up with those authorities by the appellants.

We would add that we think the procedure adopted was not correct. Where there is a dispute as to the ownership of property, it should be determined by a civil, not a criminal, court. Procedure by way of chamber summons is a civil, not a criminal procedure. We think the proper course for the appellants was to file a suit. However, these matters were not argued before us and we express no final opinion on them.

The fundamental question which we have to decide is whether this appeal is competent. The only right of appeal to this court from the High Court of Tanzania in its criminal jurisdiction is to be found in

s. 8 of the Appellate Jurisdiction Act (Cap. 451), and, apart from certain matters not here relevant, it can only be exercised by a person who has been convicted on a trial held by the High Court. The appellants are not such persons. This point was taken by counsel who appeared for the Republic – the named respondent in this appeal – and for the Commissioner-General of Customs at our invitation. Mr. Matemba was unable to point to any specific provision of the law conferring jurisdiction on this court in this matter. This court, as a creature of statute, has no inherent jurisdiction, and can only exercise such jurisdiction as is conferred on it by the legislatures of the constituent states. We are not aware of any legislation enabling us to entertain appeals from criminal trials held in the High Court of Tanzania at the instance of persons other than persons convicted in such trials. We are satisfied that we have no jurisdiction to entertain this appeal, which we dismiss as incompetent. If the appellants have a remedy, it must be sought in the Customs and Transfer Tax Management Act.

*Appeal struck out.*

For the appellants:

*CK Matemba*

For the respondent:

*Mrs Bubesh* (State Attorney)

For the Commissioner-General of Customs & Excise