

**REPUBLIC OF TRINIDAD AND TOBAGO:**

**IN THE COURT OF APPEAL  
SAN FERNANDO**

**SAN FERNANDO MAGISTERIAL APPEAL  
NO. 132 of 2005**

**IN THE MATTER OF THE APPEAL OF  
YUDHAN LAWKARAN**

Appellant

**AND**

- (1) TONY RAMPERSAD**
- (2) BOYIE RAMNATH**  
**also called REGIS RAMNATH**
- (3) JAMESEY GOMEZ**  
**Properly called PATRICK GOMEZ**
- (4) JOHANNY JAIKARAN**

Respondent(s)

**Panel:** A. Mendonca, J.A.  
P. Weekes, J.A.

**Appearances:** For the Appellant Mr. Kevin Ratiram  
For the Respondent Mr. El Farouk Hosein

**Date of delivery:** September 27, 2006

## **JUDGMENT**

### **Judgment of the Court Deliveresd by A. Mendonca, J.A.**

(1) This is an appeal from the order of the Magistrate dismissing the complaint made by the Appellant against the first Respondent alleging unlawful and malicious damage to trees growing upon his lands.

(2) The Appellant brought a private complaint against the Respondents alleging that they had unlawfully and maliciously damaged trees on his lands to the value of \$10,120.00 contrary to section 45 of the Malicious Damage Act, Chap. 11:06. The Respondents were found not guilty by the Magistrate and she dismissed the complaint. The Appellant appealed to this Court, but has however withdrawn the appeal against the second, third and fourth Respondents. This appeal therefore concerns only the first Respondent, Tony Rampersad.

(3) The Appellant's case against the first Respondent is that all material times the Appellant was the owner of approximately four (4) acres of land in the Ward of Savana Grande South. On November 9, 1999 as a result of a phone call he received he went to the Tableland Police Station and made a report and then went to his lands accompanied by a police officer. When he arrived at the lands he saw the first Respondent together with the other Respondents engaged in the cutting and removal of some trees from his land. He identified the trees that he saw cut down. The Appellant also testified that he retained a valuator to assess the value of the damaged trees. After he obtained the valuation he approached the Respondents with a view to having them pay for the damage done to his trees and the first Respondent, as well as some of the other Respondents, agreed to pay for the damage but failed to do so. The trees were left on the land and rotted away.

(4) The valuator also gave evidence on behalf of the Appellant as to the value of the damage of the trees. He assessed the value of the trees that were cut down at \$10,120.00.

(5) The first Respondent did not deny that on the November 9, 1999 he, with the assistance of the other Respondents, had in fact cut down trees and that when the Appellant appeared on the lands they were in the process of removing some of the trees. The first Respondent indicated that at the material time he was in the business of supplying wood for the making of furniture. In February 1998 he bought nine (9) wild wood trees from one Roger Legendre. Mr. Legendre's mother owns lands in the same area as the Appellant's lands. He stated that the trees that he had cut down and were removing that day were the trees that he had purchased from Mr. Legendre. The first Respondent knew that although Mr. Legendre did not own lands that his mother did and he had in fact told her of the transaction. The first Respondent stated that on November 9, 1999 when the Appellant and the police officer came to the lands he was asked by the police officer who gave him permission to remove the trees. He replied that he had bought nine (9) trees from Mr. Legendre. He stated that he showed the police officer the receipt stating that he had paid Mr. Legendre for nine (9) wild wood trees. That receipt was marked 'X' for identification before the Magistrate but was not admitted into evidence. It seems to have been the intention that the receipt would be tendered through Mr. Legendre, the maker of the receipt, but he never appeared to give evidence. The first Respondent denied that he had agreed with the Appellant to pay for the damage to the trees.

(6) The other Respondents gave evidence which supported the first Respondent's evidence that he had gone to the lands that day to extract trees which he alleged he bought from Mr. Legendre and of his responses to the police officer.

(7) The Magistrate accepted that the lands on which the trees were cut down belonged to the Appellant. The Magistrate also accepted that the four (4) Respondents were present and had cut down trees on the Appellant's land. But the Magistrate stated that the Court had to determine whether the first Respondent cut down the trees knowing that they belonged to the Appellant or was reckless as to whether they belonged to him or not. The Magistrate found that the Respondent did not know the trees belonged to the Appellant but believed that the trees were those that he had purchased from Mr. Legendre. The Magistrate did not find that the first Respondent acted recklessly. In the circumstances the Magistrate stated that "there was an element of doubt" and found the first Respondent as well as the other Respondents not guilty.

(8) The charge against the first Respondent, as I mentioned, was brought under section 45 of the Malicious Damage Act ("the Act").. This section provides as follows:

"Any person who unlawfully and maliciously commits any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is provided, the damage, injury, or spoil being to an amount exceeding two hundred dollars, is liable to imprisonment for two (2) years."

(9) To justify a conviction under this section the act done by the defendant must be done maliciously. "Maliciously" is not to be taken in the same sense as wickedness, but as requiring an actual intention to do the particular kind of harm that was in fact done. There is no necessity for there to be a malicious intent against the owner of the property (see section 48 of the Act) but there should be an unlawful act in relation to the property damaged (see **R v. Pembrilton** [1874-80] All ER Rep. 1163 and **R v. Cunningham** [1957] 2 QB 396). The defendant may also be found guilty of the offence if he is aware of the risk that damage to the property of another would be the probable result of his act, but yet he did the

act reckless of such consequence (see **R v Pembrilton**, supra, and **R. v. G.** [2004] 1 AC 1034).

(10) It is, however, a defence to charge under the section that the defendant acted under a claim of right to do the act. The defendant need not in fact have such a right so long as he bona fide believed that he had the right to do what he did (see **R v. Clemens** [1898] 1Q.B. 556 and **Heaven v. Crutchley** 68 J.P. 68).

(11) As I mentioned the Magistrate, stated that the Court had to consider two factors; did the Respondent cut down the trees knowing that they belonged to the Appellant or (2) was he reckless as to whether the trees belonged to the Appellant. So far as the first matter stated by the Magistrate for consideration is concerned, she found that the first Respondent did not know that the Appellant was the owner of the trees. The question posed by the Magistrate was, however, not the correct one. As the prosecution need not prove an intention to harm the owner of the property it is immaterial whether the first Respondent knew who was the owner of the property. The question that should have been posed is whether the first Respondent bona fide believed that he had a right to cut the trees down. Although the Magistrate did not ask herself that question, in determining the question that she did in fact pose she accepted the first Respondent's evidence that he honestly believed he was cutting down the trees that he had purchased from Mr. Legendre. As the Magistrate indicated she accepted the explanation of the first Respondent as to his actions on the day in question.

(12) But the Appellant has challenged that finding. He argues that the Magistrate relied on the receipt for the purchase of trees which was marked 'X' for identification, but which was not admitted into evidence, to come to that conclusion. Although the Magistrate did in her reasons refer to the fact that the first Respondent was able to give particulars of the receipt as a basis for accepting the first Respondent's evidence that does not, in our judgment, provide

sufficient justification for this Court to come to any different conclusion on the evidence.

(13) The evidence as to the purchase of the trees pointed in only one direction. There was no evidence to contradict the evidence of the first Respondent that he had purchased trees from Mr. Legendre, whose mother owned lands in the area. Not only was there no evidence to the contrary but also the testimony of the other Respondents supported the evidence of the first Respondent. Further the Magistrate, who had the opportunity to see and hear the witnesses, had no reservation as to the credibility of the first Respondent. She noted that the first Respondent had given at the scene, as the explanation for cutting down the trees, that he had had purchased them from Mr. Legendre. The Magistrate was impressed by what he considered to be the “spontaneity” of the explanation. The Magistrate also indicated that the first Respondent did not contradict himself and from the Magistrate’s point of view was not shaken in cross examination. Having perused the record of the proceedings, we see no basis to contradict these conclusions and in our view there is ample evidence to come to the conclusion, as did the Magistrate, that the first Respondent had cut down trees on the Appellant’s lands under the mistaken but honestly held belief that they were the trees that he had purchased from Mr. Legendre.

(14) The Appellant further submitted that even if the first Respondent believed that he was not cutting down the Appellant’s trees he was at best reckless as to the ownership of the lands/trees. This submission however takes the matter no further. The offence with which the first Respondent is charged in this case must relate to the property of another. If the first Respondent honestly believed that the property was his, having purchased the trees from Mr. Legendre, he could not have been aware of the risk that damage to the property of another would result from his act in cutting the trees down. As we indicated it is a valid defence to a charge under section 45 that the defendant acted under the honest belief that he was entitled to do the damage. This is so whether what is alleged

is that the defendant had the actual intention to do the damage or that he was reckless for he must be aware of the risk that his actions would probably result in damage to the property of another. That notwithstanding, in our judgment there is no evidential basis in this matter to argue recklessness as a ground for the establishment of the offence under section 45. The recklessness of the first Respondent was really never pursued by the Appellant in the course of the trial. The only aspect of the evidence to which the Appellant can point to is that the first Respondent did not obtain from Mr. Legendre a copy of a deed to the lands. But a deed in this case would help to establish ownership of the lands. In a case such as this a deed would not provide any real assistance to identify the lands on the ground. In this case it was not disputed that both the Appellant and the Legendres owned lands in the area. There was no evidence led by the Appellant, and neither was the first Respondent tested in cross examination, as to whether he was aware of a risk that the probable result of his actions would be damage of another's property. In our judgment the evidence does not permit a finding of recklessness and the Magistrate was right not to come to the conclusion that the Respondent was reckless.

(15) In the circumstances we would dismiss the appeal and affirm the order of the Magistrate.

Mendonca J.A.  
Justice of Appeal

Weekes J.A.  
Justice of Appeal