

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: LUBUVA, J.A., NSEKELA, J.A. And KAJI, J.A.)

CRIMINAL APPEAL NO. 72 OF 2004

BETWEEN

GODSON RIKANGA..... APPELLANT

AND

THE REPUBLIC..... RESPONDENT

**(Appeal from the Conviction of the Resident
Magistrates Court of Arusha)**

(Kapaya, PRM. Ext. Jurisdiction)

dated the 31st day of May, 1999

in

RM's Court Criminal Appeal No. 74 of 1992

REASONS FOR JUDGMENT
=====

NSEKELA, J.A.:

After hearing the appeal on the 30.9.2004, we reserved our reasons but ordered that the sentence imposed upon the appellant

Godson s/o Rikanga be reduced to such term as would result in his immediate release. We now proceed to give our reasons.

This is an appeal against sentence only. In the District Court of Monduli, the appellant was charged with two counts, (i) Robbery with violence c/s 285 and 286 of the Penal Code, Cap. 16; (ii) Being in unlawful possession of Arms and Ammunition c/s 13 (1) and 31 (2) of the Arms and Ammunition Ordinance Cap. 223 as amended by Act No. 13 of 1984 3rd Schedule. He was convicted on both counts and sentenced to thirty (30) years' imprisonment on the first count and ten (10) years' imprisonment on the second count. Sentences were to run concurrently. The appellant unsuccessfully appealed to the High Court, hence this appeal.

In his memorandum of appeal, the appellant raised three grounds of appeal. The complaint was essentially the illegality of the sentence meted out on the first count of robbery with violence. The appellant submitted that the offence was committed on the 11.4.1988 when the punishment under the then applicable law, was eight (8) years' imprisonment subject to confirmation by the High

Court. The Act imposing thirty (30) years' of imprisonment became operational on the 26.5.1989 and this was after the trial of the case had commenced in the District Court. The appellant submitted that this was in contravention of Article 13 (6) (a) of the Constitution. He added that the learned Principal Resident Magistrate (Extended Jurisdiction) (Kapaya, PRM) did not consider this aspect at all in his judgment on appeal. On his part, Mr. Mulokozi, learned Senior State Attorney, readily conceded that the sentence imposed upon the appellant was indeed illegal and should be corrected.

It is true that according to the charge sheet, the offence of robbery with violence was committed on the 11.4.1998. At that time the law applicable was the Minimum Sentences Act, 1972 which provided under Section 5 (b) a minimum sentence of seven (7) years' imprisonment for robbery. Before sentencing the appellant, the Public Prosecutor addressed the trial court as follows –

"PP: I have no previous for (sic) the present accused person. But the accused committed the offence in 1988. The Parliament has amended the offence to 30 years'

imprisonment the sentence which I pray to be imposed."

The appellant was accordingly sentenced to thirty (30) years' imprisonment with twelve (12) strokes of corporal punishment. Section 5 of the Minimum Sentences Act, 1972 as amended by the Written Laws (Miscellaneous Amendments) Act, 1989 Act No. 10 of 1989 provides as follows –

"5(b) Where a person is convicted of robbery, the Court shall sentence him to imprisonment for a term of not less than fifteen years;

(bb) Where any person is convicted of armed robbery the Court shall sentence him to imprisonment for a term of not less than thirty years."

Following this amendment of the Minimum Sentences Act, 1972 by Act No. 10 of 1989, paragraph (b) of Section 5 of the Act provided for a term of imprisonment of fifteen (15) years' for robbery, while paragraph (bb) provided for a term of thirty (30) years' imprisonment for armed robbery. The crucial issue in the appeal is that Act No. 10 of 1989 came into effect on the 26.5.1989, but the offence was committed on the 11.4.1988 at a time when Act No. 10 of 1989 was

not in our statute books. Section 49 of the Interpretation of Laws and General Clauses Act, 1972 provides –

“49. Where an act constitutes an offence, and the penalty for such offence is amended between the time of the commission of such offence and the conviction therefore, the offender shall, unless the contrary intention appears, be liable to the penalty prescribed at the time of the commission of such offence.”

The offence was committed before Act No. 10 of 1989 came into effect. In addition at the time of the commission of the offence, the prescribed minimum sentence for the offence was seven years' imprisonment under section 5 (b) of the Minimum Sentences Act, 1972. And we would add that at that time in terms of section 170 (1) of the Criminal Procedure Act, 1985 the power of a subordinate court in sentencing was limited to an award of a term not exceeding eight years imprisonment.

In the event, the sentence of thirty (30) years' imprisonment imposed upon the appellant was undoubtedly illegal and cannot be allowed to stand. (See: Christopher Mwakabura v. Republic (1992)

TLR 380; Abdul Abdallah v. Republic (1995) TLR 1.) The sentence is therefore rectified by substituting a term of imprisonment for seven (7) years' on the first count. However taking into account the fact that the appellant has been serving his term in prison since the 10.2.1992, we ordered on the 30.9.2004 that the appellant be released from prison immediately unless otherwise lawfully held for some other cause.

DATED at ARUSHA this 4th day of October, 2004.

D. Z. LUBUVA
JUSTICE OF APPEAL

H. R. NSEKELA
JUSTICE OF APPEAL

S. N. KAJI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



S. M. RUMANYIKA
DEPUTY REGISTRAR