

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

(CORAM: MUNUO, J.A, LUANDA, J.A And MJASIRI, J.A)

CRIMINAL APPEAL NO. 293 OF 2009

DAMAS WELLA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
At Songea)**

(Manento, J)

Dated 23rd day of April, 2003

In

Criminal Revision No. 3 of 2000

JUDGEMENT OF THE COURT

20 & 22 JUNE, 2011

LUANDA, J.A:

On 6/10/1999 the District Court of Songea sitting at Songea (Sambo, RM as he then was) convicted the appellant DAMAS s/o WELA on his own plea of guilty for the offence of rape contrary to sections 130 and 131 (1) and (3) of the Penal Code, Cap.16 and sentenced him to life imprisonment. The above sentence was meted out by the court because the victim of rape was six years of age.

On 16/7/2002 a period of 1 year, 9 months and 10 days, the appellant filed in the High Court of Tanzania at Songea, a chamber summons supported by an affidavit so that the High Court revise the order of conviction and sentence. The application was made under sections 31 and 44 of the Magistrates' Courts Acts, Cap 11. Manento, J heard the application and in the end he dismissed it for lack of merits. Aggrieved by that decision, hence this appeal.

The appellant has raised five grounds of appeal in the memorandum of appeal. For reasons which will be clear in this judgment, we will not discuss the grounds raised. We will explain.

When the appeal was called on for hearing, the Court wished to know the legal position in respect of two areas. **One**, in view of the sections cited in the chambers summons, whether the High Court was properly moved. **Two**, if the High Court was properly moved, whether the application was filed in time.

Ms Andikalo Msabila, learned Senior State Attorney, after reading the sections cited in the chamber summons, was of the firm view that the High Court was not properly moved. As regards to the question of filing of the application to have been filed within time or not, Ms Msabila was hesitant.

On the other hand, the appellant being a layman had nothing useful to inform us.

As earlier indicated, the application for revision cited sections 31 and 44 of the Magistrates' Courts Act, Cap. 11 R.E. 2002. Are the sections cited therein clothed the High Court with jurisdiction to entertain the revisional application?

Section 31 of the Magistrates Courts Act, Cap.11 R.E.2002 reads as follows.

*"31 (1) In the exercise of its revisional jurisdiction **under this Part**, the High Court shall have all the powers conferred upon it in the exercise of its appellate jurisdiction under this*

paragraph including the powers to substitute a conviction and sentence for an acquittal or an acquittal for a conviction or to make a declaratory order; and the provisions of the proviso to paragraph.(b) of section 29 shall apply in relation to an order quashing proceedings and ordering a rehearing which is made in the exercise of the High Court's revisional jurisdiction as they apply in relation to any such order in the exercise of its appellate jurisdiction."

[Emphasis supplied]

The phrase "under this Part" is referring to Part III of the Magistrates' Court Act, Cap 11 R.E.2002 which generally deals with matters originating in Primary Courts. And Part III (c) to which section 31 is cited deals specifically with:

"Appellate and Revisional Jurisdiction of the High Court in relation to matters originating in Primary Courts".

Earlier on we have said that the appellant was charged, convicted and sentenced by the District Court of Songea. Matters originating in District Courts fall under Part IV of the Magistrates' Courts Act, Cap II R.E.2002. It is clear therefore that since the subject matter of these revisional proceedings did not come from Primary Court, section 31 of the Magistrates' Courts Act, Cap. 11 R.E.2002 does not apply.

We are now moving to section 44 of the Magistrates' Courts Act, Cap.11 R.E.2002. The section reads:

"44 (1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-

*(a) Shall exercise general powers of **supervision** over all district Courts and Courts of Magistrate and may, at any time, call for and inspect or direct the inspection of the records of such Courts and give directions as it considers may be necessary in the interest of justice, and all such courts shall comply with such directions without undue delay".*

Before we discuss the import of section 44 of the Magistrates' Courts Act, Cap. 11 R.E.2002 we think we should understand first what supervision is all about. The word supervision has been defined by **Oxford:**

Advanced Learner's Dictionary, thus:-

"To make sure that everything is done correctly."

Having defined what supervision is all about, the question now is : Was the High Court empowered to do what it had done ?

Our reading and understanding of the above cited section is that the High Court is empowered to supervise district and resident magistrate courts and make direction to such court in respect of any proceedings provided the matter is yet to be finalized. We are saying so because once the aforementioned courts had finalized the matter, the aggrieved party has the right to appeal to the High Court. And so to allow an aggrieved party to file revisional proceedings in connection with the matter which had already been finalized is tantamount to allowing such party to appeal

through a back door. That should not be allowed to happen; it is not proper.

From above therefore, we are of the considered view that section 44 of the Magistrates' Court Act, Cap. 11 R.E.2002 does not cloth the High Court with jurisdiction to entertain matters which had already been finalized by subordinate courts. The High Court was not properly moved.

As the High Court had no jurisdiction under section 44 of Magistrates' Courts Act, Cap. 11 R.E. 2002 to entertain revisional proceedings on matters which had already been finalized obviously the question as to whether the application was filed in time or otherwise does not arise.

In fine, we quash the entire proceedings of the High Court and strike out this appeal.

Order accordingly.

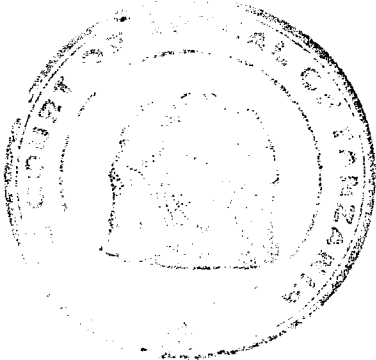
DATED at **IRINGA** this 22nd day of June, 2011.

E. N. MUNUO
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

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



A handwritten signature in black ink, appearing to read "J.S. MGETTA", with a flourish at the end.

J.S. MGETTA
**DEPUTY REGISTRAR
COURT OF APPEAL**