

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

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

CRIMINAL APPEAL NO. 254 OF 2011

JUMA SACKSON @ SHIDA..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Appeal from the decision of the High Court of
Tanzania at Mbeya)**

(Mmilla, J.)

dated 15th day of August 2011

in

Criminal Appeal No. 12 of 2010

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JUDGMENT OF THE COURT

11th & 13th JUNE 2013

MJASIRI, J.A.

This is a second appeal. The appellant, Juma Sackson @ Shida with four others were charged in the District Court of Mbozi District sitting at Mbozi with two (2) counts of armed robbery contrary to sections 285 of the Penal Code, Cap 16, R.E. 2002. He was convicted as charged and was sentenced to 30 years

imprisonment. The other four accused persons were acquitted. Aggrieved by the conviction and sentence, he lodged his appeal to the High Court which was unsuccessful. Hence this second appeal.

The appellant has lodged a seven (7) point memorandum of appeal. However the major grounds of appeal can be summarized as under:-

- 1. That the High Court judge erred in fact and law in holding that the appellant was properly identified by PW1 and PW5.*
- 2. That the learned High Court Judge erred in fact and law in relying on the evidence of PW 2 and PW 3.*
- 3. That the learned High Court Judge erred in fact and law in holding that the appellant was properly identified when no identification parade was conducted.*
- 4. That the conviction of the appellant was against the weight of the evidence.*

At the hearing of the appeal, the appellant appeared in person and was unrepresented while the respondent Republic was represented by Mr. Francis Rogers learned State Attorney.

The background leading to the conviction of the appellant is as follows:- It was alleged by the prosecution that on January 21, 2009 at about 22:15 hours and 22.20 hours, respectively at Dreams Grocery situated at Maporomoko area, Tunduma, in Mbozi District in Mbeya Region the appellant stole a Nokia Mobile phone worth Shs 100,000/= and cash of Shs. 35,000/= the property of Shaban Anyitike and another Nokia mobile phone worth Shs. 150,000/= and cash amounting to Shs 415,000/= being the property of Lazaro Simchimba. The appellant and the other accused persons used a gun and a panga to perpetrate the said crime. The appellant denied any involvement with the offence. The appellant was arrested by two police officers who were on patrol duty on the night in question and upon being searched he was found in possession of a panga, the voter identity card of Shaban Anyitike and cash of Shs. 35,000/=.

Before hearing the parties on the merits of the appeal the Court *suo motu* pointed out to the parties that the trial court proceeded to sentence the appellant without entering a conviction. The pivotal issue for determination by the Court is whether or not the judgment of the trial court was valid, given the circumstances.

The appellant being a layman, and being unrepresented did not have anything to say on the legal issue raised by the Court.

The learned State Attorney on his part readily conceded that there was non compliance with section 235(1) of the Criminal Procedure Act, Cap 20. He asked the Court to invoke its revisional powers under section 4(2) of the Appellate Jurisdiction Act. (Cap 141) quash the decision of the High Court and the District Court and set aside the sentence and to return the file to the trial court so that a proper judgment could be written by the trial magistrate.

It is evident from the record that no conviction was entered by the trial magistrate. His judgment was concluded as under:-

" From the foregoing arguments the accused is held liable for the offence of armed robbery. The 1st, 3^d, 4th and 5th accused are hereby acquitted for the benefits of doubts which had been pointed."

This irregularity was not noticed by the High Court. It is settled law that once the trial court finds an accused person guilty of the offence charged, the trial magistrate must enter a conviction before passing sentence. Section 235 (1) of the Criminal Procedure Act (Cap 20) provides as under:

" The Court having heard both the complainant and the accused person and their witnesses and the evidence, shall convict the accused and pass sentence upon or make an order against him according to law or shall acquit him or shall

dismiss the charge under section 38 of the Penal Code”

Emphasis ours.

The above cited section is couched in mandatory terms; therefore the sentencing process must be preceded by a conviction. Failure to enter a conviction is a fatal irregularity. Therefore there is no valid judgment upon which the High Court could uphold or dismiss an appeal.

In **Amani Fungabikasi V. Republic**, Criminal Appeal No. 270 of 2008 CAT (unreported) a similar situation arose. No conviction was entered by the District Court. The Court stated thus:-

"It is true, as contended by Ms. Pendo Makando that in the light of the above short coming we would make an order for retrial. But it is also true that we would have easily set aside the decision of the High Court and

consequently direct that the record be remitted to the District Court so that it enters a conviction.”

See also **Shaban Iddi Jololo and others v Republic**, Criminal Appeal No. 200 of 2006, **Khamis Rashid Shaban v DPP Zanzibar**, Criminal Appeal No. 184 of 2012, **Ruzibukya Tibayekomy v Republic**, Criminal Appeal No 218 of 2011 and **Jonathan Mluguani v Republic**, Criminal Appeal No. 15 of 2011, CAT (all unreported).

For the foregoing reasons, and in exercise of our revisional jurisdiction under section 4 (2) of the Appellate Jurisdiction Act (Cap 141) we hereby quash and set aside the proceedings and judgment of both the District Court and the High Court. We remit the file to the trial court to enter a conviction in order to deliver a judgment in accordance with the requirements under the law.

The appellant shall remain in custody pending the finalization and delivery of judgment by the District Court.

It is so ordered.

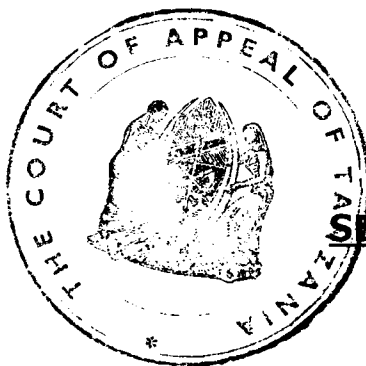
DATED at MBEYA this 12th day of JUNE 2013.


B.M. LUANDA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

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




P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL