

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: KILEO, J.A., MUSSA, J.A. And JUMA, J.A.)

CRIMINAL APPEAL NO. 356 "A" 2014

MOHAMED ALLY.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Dar es Salaam)

(Mgaya, J.)

dated the 02nd day of September, 2014
in
HC. Criminal Appeal Case No. 89 of 2012

JUDGMENT OF THE COURT

6th & 13th July, 2015

MUSSA, J.A.:

In the District court of Ilala, sitting at Samora Avenue, the appellant stood arraigned for two counts of an unnatural offence and rape, respectively, contrary to sections 154 and 130 of the Penal Code, Chapter 16 of the Revised Laws. The allegation was that on divers dates in October, 2007 the appellant contemporaneously sodomised and ravished a certain Fatuma Saidi, aged six, at Buyuni kwa Singa, within Ilala District.

The appellant denied the accusation but, on the whole of the evidence, the trial court entered a guilty verdict, whereupon he was sentenced to concurrent terms of life imprisonment with respect to each count and, additionally, he was handed down a corporal punishment of six strokes of the cane. The appellant was dissatisfied following which he contested the trial court's verdict but, on the first appeal, the High Court (Mgaya, J.) dismissed the appeal in its entirety. Still discontented, the appellant presently seeks to impugn the decision of the High Court upon a memorandum comprised of thirteen points of grievance.

At the hearing before us, the appellant was fending for himself, unrepresented, whereas the respondent Republic had the services of Mr. Thadeo Mwenempazi, learned Principal State Attorney. The appellant fully adopted the memorandum of appeal without elaboration but he, however, asserted his right to make a rejoinder in the wake of the submission of the learned Principal State Attorney.

Incidentally, Mr. Mwenempazi was of the view that the trial courts' verdict is vitiated by a fatal omission which is apparent on the face of the

judgment. Expounding his view, the learned Principal State Attorney submitted that, upon finding the appellant guilty as charged, the learned presiding Resident Magistrate did not go so far as to convict him. Mr. Mwenempazi urged that the omission vitiated the trial court's verdict and, accordingly, there was no valid judgment upon which the High Court could have upheld or dismissed. In the upshot, the learned Principal State Attorney urged us to exercise our revisional jurisdiction and, thereby, vacate the proceedings of the High Court and consequently direct that the record be remitted back to the trial court so that it enters a conviction in accordance with the law.

For his part, the appellant did not have anything in reply and left it to the Court to decide the matter in the interests of justice. If we may express at once, the appellant's barren response on this, rather, technical aspect of the proceedings, is quite understandable given the fact that he is an unrepresented layman.

Addressing the issue, we entirely subscribe to the submission of Mr. Mwenempazi to the effect that upon finding the appellant guilty as charged,

the trial court fatally omitted to enter a conviction thereon. The shortcoming offends the provisions of section 235(1) of the Criminal Procedure Act, chapter 20 of the revised laws, which stipulates; -

*"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 supplied].

As is vividly apparent from the extracted provision, upon entering a guilty finding, it is imperative upon the trial court to additionally enter a conviction. This requirement has been reiterated by the Court upon numerous decisions but we may only refer to the unreported Criminal Appeal No. 200 of 2006 – **Shabani Iddi Jololo and Three others v Republic**.

To this end, it follows that the verdict of the trial court is fatally incomplete just as the decision of the High Court is left with no leg to stand on. In the result, we are left with no other viable option than to invoke the revisional jurisdiction of the Court and vacate the entire proceedings of the

High Court. We further direct that this record be remitted back to the trial court for it to enter a conviction in accordance with the law. Thereafter, the appellant may wish to recommence afresh his quest to impugn the decision of the trial court.

DATED at **DAR ES SALAAM** this 8th day of July, 2015.

E. A. KILEO
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

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


E. F. Fussi
DEPUTY REGISTRAR
COURT OF APPEAL