

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: MBAROUK, J.A., ORIYO, J.A. And MMILLA, J.A.,)

CRIMINAL APPEAL NO. 236 OF 2012

**OROONDI S/O JUMAAPPELLANT
VERSUS**

THE REPUBLIC..... RESPONDENT

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

(Kaduri, J.)

**Dated 11th day of June, 2012
in
Criminal Appeal No. 86 of 2011**

JUDGMENT OF THE COURT

10th & 20th July, 2015

MBAROUK, J.A.:

Before the District Court of Morogoro at Morogoro, the appellant was charged with unnatural offence contrary to section 154(1)(a) the Penal Code, Cap. 16 of the Law R.E. 2002. The particulars of the offence were to the effect that, on 30th day of November, 2009 at about 17:30 hours at Idete village, Ngerengere area within the District and Region of Morogoro, the appellant unlawfully had carnal knowledge

against the order of nature of one Christina d/o Goa, a girl aged 9 years. At the conclusion of the trial, the appellant was found guilty and sentenced to life imprisonment. He unsuccessfully appealed to the High Court, hence this second appeal.

In this appeal, the appellant appeared in person, while the respondent/Republic was represented by Ms Janethreza Kitali and Ms. Honorina Mushi, learned Senior State Attorneys.

Before we allowed the parties to argue the appeal on merit, we invited both parties to give us their views on a pertinent aspect, having realized that there was no conviction entered in the case against the appellant at the trial court as required under the sections 235 (1) and 312 (2) of the Criminal Procedure Act Cap. 20 R.E. 2002 (the CPA).

Addressing us on the point, Ms. Janethreza submitted that, she initially failed to note such an omission. However, having looked at the record, she conceded that there was no conviction entered after the trial court found the appellant

guilty to the offence against him. For that omission, the learned Senior State Attorney urged us to invoke section 4 (2) of the Appellate Jurisdiction Act Cap. 141 (the AJA) to quash and set aside the proceedings and judgment of the first appellate court.

Being a legal issue raised by the Court *suo motu*, the appellant being a lay person who appeared unrepresented, simply left the matter for the Court to use its wisdom in reaching to a just decision.

There is no doubt that the trial court failed to comply with the mandatory requirements of the provisions of sections 235(1) and 312 (2) of the CPA. Section 235 (1) of the CPA provides as follows:-

"The court having heard both the complainant and the accused person and their witnesses and the evidence, shall convict the accused person and pass sentence 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 added].

Whereas on the other hand, section 312(2) of the CPA provides as follows:-

*“In the case of conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, **the accused person is convicted** and the punishment to which he is sentenced.”*

[Emphasis added].

Non compliance with the requirement to convict the accused as directed under sections 235 (1) and 312 (2) of the CPA rendered the judgment of the trial court incompetent and the High Court was not supposed to dismiss the appellant’s appeal as the judgment sought to be appealed against was incompetent.

Various decisions of this Court have held that failure to enter conviction is a fatal irregularity. For instance, see the

decisions of this Court in **Shabaani Idi Jololo and three others v. Republic**, Criminal Appeal No. 200 of 2006, **Kimangi Ilaa v. Republic**, Criminal Appeal No. 22 of 2013, **Elia John v. Republic**, Criminal Appeal No. 267 of 2011, **Paulo s/o Emmanuel @ Ntorogo and Another v. Republic**, Criminal Appeal No. 19 of 2008 (All unreported) to name a few.

In the result, we are constrained to invoke the powers of revision conferred upon us under section 4(2) of the AJA to quash and set aside all the appellate proceedings and judgment of the first appellate court. We also quash and set aside the judgment of the trial court. Consequently, we order the record to be sent back to the trial court with the directions to prepare and deliver a judgment which will comply with the requirements under sections 235(1) and 312 (2) of the CPA.

In addition to that, we further order that, in the meantime, the appellant shall remain in custody pending the finalization and the delivery of the judgment by the trial court.

Eventually after the conviction is entered for the interests of justice, we order that the imprisonment sentence should consider the period the appellant has already served in prison. Thereafter, if he so wishes, he is at liberty to process his appeal to the first appellate court in accordance with the requirements of the law. It is so ordered.

DATED at DAR ES SALAAM this 14th day of July, 2015

M. S. MBAROUK
JUSTICE OF APPEAL

K.K. ORIYO
JUSTICE OF APPEAL

B.M.K. MMILLA
JUSTICE OF APPEAL

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


E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL