

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: KIMARO, J.A., MUGASHA, J.A., And MZIRAY, J.A.)

CRIMINAL APPEAL NO. 75 OF 2015

ELISA PATRICKAPPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the judgment of the High Court of Tanzania at Sumbawanga)

(Sambo,J.)

dated 7th March 2014

in

Criminal Appeal No. 61 of 2012

.....

RULING OF THE COURT

14th & 19th April 2016

KIMARO, J.A.:-

The appeal was called for hearing on 14th April, 2016. In attendance for the hearing of the appeal were, the appellant who appeared in person and Mr. Basilius Namkande, learned State Attorney who represented the respondent /Republic.

Before the appeal could be heard the Court "*suo moto*" required the parties to address it on an irregularity apparent in the record of appeal at

page 27. The appellant was charged in the District Court of Sumbawanga with the offence of incest by males contrary to section 158(1) of the Penal Code. He was alleged to have a prohibited sexual intercourse with one Agnetha d/o January, who was aged 13 years and to his knowledge was his daughter.

The trial court after conducting the trial found the appellant guilty. Without entering a conviction, the trial court sentenced the appellant to an imprisonment for a term of thirty years. His first appeal to the High Court was unsuccessful.

The Court required the parties to address it on the propriety of sentencing the appellant after finding him guilty without first entering a conviction against him. The learned State Attorney was quick to point out that it was a procedural irregularity for the trial court to sentence the appellant without first convicting him. He said that was a contravention of section 235(1) of the Criminal Procedure Act, [CAP 20 R.E. 2002]. He supported his position by citing to the Court the case of **Philomon Tamson V Republic** Criminal Appeal No. 376 CAT Mbeya (unreported).

Given the irregularity mentioned, the learned State Attorney requested the Court to quash the entire proceedings of the High Court and remit the file to the District trial court for conviction of the appellant before he takes further steps.

The respondent in reply admitted being ignorant of the issue raised “*suo moto*” by the Court. He left the matter to the determination of the Court.

Section 235 (1) of Cap 20 says that:

*“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 dismiss the charge under section 38 of the Penal Code.”*

(Emphasis ours).

In the case of **Philomon Tamson V R.** (supra), the trial court sentenced the appellant after finding him guilty but without first entering a conviction against him. The Court held that:

"At page 59 of the record, it is evident that the trial court did not enter a conviction as required under section 235 of Cap 20. That was a fatal omission on the part of the trial court. Subsequent to the decision of the trial court as stated above, the appellant appealed against both conviction and sentence. However in our view, he could not do so when there was no conviction on record. Therefore the appeal to the High Court was misconceived and incompetent."

The case at hand is in all four with the case of **Philemon Tamson V Republic** (supra). Since the appellant's appeal to the High Court was incompetent because of the irregularity occasioned by omission by the trial court to enter a conviction after finding the appellant guilty, we invoke the revision powers conferred upon the Court by section 4(2) of the Appellate Jurisdiction Act, [CAP 141 R.E. 2002]. We declare the entire proceedings of the High Court a nullity. Subsequently, we order file to be remitted back to the trial court for compliance with section 235 (1) of Cap 20. After compliance with that procedure, the appellant can then file his appeal to

the High Court. Considering the wasted time in pursuing this appeal, the trial court is ordered to expedite the process of rectifying the mistake it made to enable the appellant pursue his rights of appeal.

DATED at MBEYA this 15th day of April 2016.


N. P. KIMARO
JUSTICE OF APPEAL

S. E. A. MUGASHA
JUSTICE OF APPEAL

R. E. MZIRAY
JUSTICE OF APPEAL

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




E. Y. Mkwizu
DEPUTY REGISTRAR
COURT OF APPEAL