

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

(CORAM: MJASIRI, J.A., KAIJAGE, J.A. And MMILLA, J.A)

CRIMINAL APPEAL NO. 37 OF 2016

**MACHARIMA SAID MNYIKA APPELLANT
VERSUS
RAMLA SAID MNYIKARESPONDENT**

(Appeal from the decision of the High Court of Tanzania at Tanga)

(Msuya J.)

**dated 19th day of December 2014
in
Criminal Appeal No. 1 of 2014**

JUDGMENT OF THE COURT

20th & 27th June, 2016

KAIJAGE, J.A:

This is a third appeal. In Mtae Primary Court of Lushoto District (the trial Court), the appellant was charged, tried and convicted of fraudulently disposing of trust property contrary to section 314 (1) of the Penal Code (Cap 16 R.E. 2002). He was consequently sentenced to seven (7) years imprisonment and ordered to return the misappropriated properties of the deceased's estate. His appeal to the District Court of Lushoto against both the conviction and sentence was dismissed. Undaunted, he further appealed to the High Court which reduced the sentence from that of seven (7) years

to one of five (5) years imprisonment. Still aggrieved, he has now come to this Court for a third attempt.

Before us, both parties herein appeared in person, fending for themselves.

When the appeal was called on for hearing, we raised, *suo motu*, a jurisdictional issue. Our main concern was whether the trial primary court had jurisdiction to try, convict and sentence the appellant, as it did, in view of the clear provisions under section 18 (1) of the Magistrates' Courts Act, Cap 11 R.E 2002 (the MCA).

Understandably, the parties to the present appeal being laymen, made no significant response to the legal issue we raised. They simply left the matter in the hands of the Court to decide.

We shall begin by examining section 18 (1) of the MCA which, in part, reads:-

"S. 18 (1) A primary Court shall have and exercise jurisdiction-

(a) N/A

(b) N/A

- (c) ***In all proceedings in respect of which jurisdiction is conferred on a Primary Court by the First Schedule to this Act; and***
- (d) *In all proceedings in respect of which jurisdiction is conferred on a Primary Court by any other law”*

[Emphasis is ours].

The **First schedule** to the MCA prescribes **offences under the Penal Code** which are triable by primary courts. We have earlier hinted that, the appellant in this case was charged with the offence of fraudulently disposing of trust property contrary to section 314 (1) of the Penal Code. That offence does not appear in the First Schedule to the MCA comprising of the list of offences under the Penal Code which are triable by primary courts.

On the strength of the foregoing brief exposition, we hold a firm view that Mtae Primary Court of Lushoto District had no jurisdiction to try the appellant upon a charge preferred under section 314 (1) of the Penal Code. That trial was, certainly, a nullity for want of jurisdiction and no valid appeal could have arisen therefrom. In consequence thereof, we declare all the proceedings conducted before the trial court and the two appellate courts below, a nullity.

In the exercise of our powers under section 4 (2) of the Appellate Jurisdiction Act (Cap 141 R.E 2002), we hereby quash the said null proceedings of the lower courts and set aside the orders made and the illegal sentences meted out against the appellant. We further order that unless otherwise lawfully held, the appellant be released from prison forthwith. The respondent is at liberty to seek for other appropriate legal avenues through which her rights could be pursued.

It is so ordered.

DATED at **TANGA** this 24th day of June, 2016.

S. MJASIRI
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL



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


P. W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL