

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

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

CRIMINAL APPEAL NO. 203 OF 2011

1. GEORGE PATRICK MAWE
2. BAKARI JUMANNE @ CHIGALEME
3. SALUM ABUU @ TALL MIXER
4. JUMA LEONARD @ CHITETE
5. MODESTUS BEDA @ NGODO MSOS

.....APPELLANTS

VERSUS

THE REPUBLIC.....RESPONDENT
(Appeal from the decision of the High Court of Tanzania
at Dar es Salaam.)

(Shangwa, J.)

Dated the 21st day of June, 2010

in

HC. Criminal Appeal No. 134 of 2006

JUDGMENT OF THE COURT

15th & 21st April 2016

MBAROUK, J.A.:

The appellants were arraigned before the District Court of Ilala at Samora Avenue with the offence of armed robbery contrary to Sections 285 and 286 of the Penal Code, Cap. 16 Vol. I of the Laws. The particulars of the offence were to the effect that, on the 25th day of August, 2000 at about 19.30 hrs. at Jangwani Darajani, along Morogoro road within Ilala District, Dar es Salaam region, the appellants did steal cash T.Shs. 80,000/-, one wrist watch make RADO

valued at T.Shs. 200,000/= one bicycle make Phoenix value at T.Shs. 65,000/= and one handbag valued at T.Shs. 5,000/=. All together amounting to T.Shs. 350,000/= from one Constantine Masali and immediately before such stealing did use a machete to cut him severely on his head in order to obtain the said property.

At the end of the trial, the trial magistrate found that the prosecution evidence proved the case beyond reasonable doubt and sentenced each appellant to thirty (30) years imprisonment. They unsuccessfully appealed to the High Court. They were aggrieved, hence, this second appeal.

In this appeal, the appellants fended for themselves, whereas the respondent/Republic was represented by Mr. Credo Rugaju, learned Senior State Attorney assisted by Ms. Clara Charwe, learned State Attorney.

Before we allowed the parties to argue the appeal on merit, the Court invited both parties to give their views after having noted that the trial magistrate failed to enter conviction against the appellant as required under Sections 235(1) and 312(2) of the Criminal Procedure Act Cap. 20 R.E. 2002 (CPA).

The learned Senior State Attorney readily conceded to the omission raised by the Court. For that reason, he urged us to invoke the powers conferred on us under Section 4(2) of the Appellate Jurisdiction Act (the AJA) and set aside the

sentence imposed on the appellants and nullify the proceedings and judgment of the first appellate court. He consequently prayed for the matter to be remitted to the trial court for retrial.

In their brief submissions, the appellants being lay persons and taking into account that a matter raised by the Court was technical and involved a legal issue, they simply left the matter to the Court to use its wisdom to reach to a just decision. However some of them prayed in the event the Court finds it fit to order a retrial and if convicted there should be consideration of the term they have already served in prison.

In the instant case, as pointed out earlier, the trial magistrate has failed to comply with mandatory requirements of the provisions of section 235(1) of the CPA which requires that once the trial court has heard both parties and found the appellants guilty of the offence charged, the trial magistrate was duty bound to enter a conviction and thereafter pass a sentence. To appreciate what is contained in that provision 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).

Furthermore, 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 which, **the accused person is convicted** and the punishment to which he is sentenced.”*(Emphasis added).

This Court has held in its various decisions that failure to enter conviction after the accused is found guilty renders the judgment of trial court incompetent. For example, see the decision of this Court in the case of **Oroondi Juma v. Republic**, Criminal Appeal No. 236 of 2012 (unreported), where the Court said that:-

"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”

The requirement was also underscored in the case of **Hassani Mwambanga v. Republic**, Criminal Appeal No. 410 of 2013 (unreported), where this Court stated that:-

"...no sentence can be passed or imposed on an accused person unless and until he or she has been duly convicted of a particular offence."

Also see the decisions of this Court in **Shabani Iddi, Jololo and Three Others v. Republic**, Criminal Appeal No. 200 of 2006, **Elia John v. Republic**, Criminal Appeal No. 267 of 2011, **Rashid Omary Kibwetabweta v. Republic**, Criminal Appeal No. 85 of 2015. (All unreported).

Having established that in this case the trial magistrate has failed to enter conviction in his judgment that renders the judgment incompetent. In the result, we are constrained to invoke the powers of revision bestowed on us under Section 4(2) of the AJA and quash the purported judgment of the trial court and set aside the sentence of thirty (30) years imprisonment which was wrongly imposed on the appellants. In addition to that, we also quash the proceedings and judgment of the High Court as the same was a nullity. Finally, we order the case to be remitted to the trial court urgently for the preparation and delivery of a judgment which shall comply with the mandatory requirements under the provisions of Sections 235(1) and 312(2) of the CPA.

We further order that, in the meantime, the appellants shall remain in custody pending the finalization and delivery of the judgment by the trial court.

For the interest of justice, we also order that after the appellants have been properly convicted in accordance with the law, the period they have already served in prison be considered when the sentence is passed. Thereafter, if they so wish, they are at liberty to process to appeal to the first appellate court in accordance with the requirements of the law.

It is so ordered.


DATED at **DAR ES SALAAM** this 18th day of April, 2016.

M.S. MBAROUK
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

S.S. KAIJAGE
JUSTICE OF APPEAL

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


Z. A. Maruma
DEPUTY REGISTRAR
COURT OF APPEAL