

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: MJASIRI, J.A., MUGASHA, J.A., And LILA, J.A.)**

**CRIMINAL APPEAL NO. 503 OF 2015**

**KASSIM KASSIM @ JUMA ..... APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**(Appeal from the decision of the High Court of**

**Tanzania at Dar es Salaam)**

**(Shangwa, J.)**

**dated on 30<sup>th</sup> day of September, 2015**

**in**

**Criminal Appeal No. 79 of 2014**

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**JUDGMENT OF THE COURT**

26<sup>th</sup> February & 4<sup>th</sup> April, 2018

**MJASIRI, J.A.**

In the District Court of Morogoro at Morogoro, the appellant Kassim s/o Kassim @ Juma was charged and convicted of unnatural offence contrary to section 154(1) (a) of the Penal Code [Cap 16 R.E. 2002]. He was sentenced to thirty (30) years imprisonment. Aggrieved by the decision of the trial court, the appellant filed his appeal to the High Court. His appeal to the High Court being unsuccessful, the appellant has now

come before this Court on a second appeal. The appellant presented a six-point memorandum of appeal.

At the hearing of the appeal the appellant did not have the services of an attorney and he had to fend for himself. The respondent Republic was represented by Mr. Mutalemwa Kishenyi learned Senior State Attorney who was assisted by Ms. Ellen Masalu, learned State Attorney. The appellant being a layman and without the benefit of counsel opted for the State Attorney to submit first. However, prior to that he sought the permission of the Court to orally present additional grounds of appeal.

On his part the learned State Attorney submitted that the trial Court failed to enter a conviction. He made reference to the case of **Sam Sempebwa and Another v. Republic**, Criminal Appeal No. 169 of 2010 (unreported). He asked the Court to remit the record to the trial Court so that a proper judgment could be prepared in compliance with the legal requirement for entering a conviction.

On his part the appellant did not have much to say on the legal issue of failure to enter conviction, being unrepresented and without the benefit of counsel.

We on our part upon a careful perusal of the record are inclined to agree with the learned Senior State Attorney that the legal requirement under Section 235(1) of the Criminal Procedure Act [Cap 20 R.E. 2002] was not met.

It is evident from the record that no conviction was entered by the trial magistrate. He simply proceeded to sentence the appellant without entering a conviction. The law is settled. Section 235(1) of the CPA provides 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 shall dismiss the charge under section 38 of the Penal Code"*

[Emphasis provided].

Since no conviction was entered in the instant case in terms of section 235(1) of the CPA there was no valid judgment. Section 312(2) of the CPA clearly states that in the case of a **conviction** the judgment shall specify the offence and the section of the Penal Code or other law under which, the accused is convicted and the punishment to which he is sentenced.

This Court has held on numerous occasions that a judgment which lacks a conviction in terms of section 235(1) read together with section 312 of the CPA is not a valid judgment. See – for instance, **Sam Sempembwa and Another v Republic** (supra), **Amani Fungabikisi v. Republic**, Criminal Appeal No. 270 of 2008 and **Shabani Iddi Jololo and Three Others v. Republic** (all unreported).

In view of the invalidity of the judgment for lacking a conviction it follows as the night follows day, that the proceedings and judgment of the High Court are nullity. In the circumstances we hereby quash the proceedings and judgment of the High Court under section 4(2) of the Appellate Jurisdiction Act [Cap 141 R.E. 2002] and remit the record to the

trial Court with directions to compose a proper judgment in compliance with the law by entering a conviction. It is hereby further directed that should the appellant wish to appeal after being convicted by the trial Court, the hearing of the appeal should be expedited by the High Court.

Order accordingly.

**DATED** at **DAR ES SALAAM** this 28<sup>th</sup> day of March, 2018.

S. MJASIRI  
**JUSTICE OF APPEAL**

S.E.A. MUGASHA  
**JUSTICE OF APPEAL**

S.A. LILA  
**JUSTICE OF APPEAL**

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



A.H. MSUMI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**