

**IN THE COURT OF APPEAL OF TANZANIA**

**AT TANGA**

**(CORAM: MUSSA, J.A, LILA, J.A. And MKUYE, J.A.)**

**CRIMINAL APPEAL NO. 87 OF 2017**

**JACKSON DIDAS@ MACHANGE.....APPELLANT**

**VERSUS**

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

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

**(Aboud, J.)**

**dated the 10<sup>th</sup> day of March, 2017**

**in**

**Criminal Appeal No. 95 of 2016**

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**JUDGMENT OF THE COURT**

25<sup>th</sup> & 28<sup>th</sup> February, 2019

**MUSSA, J.A.:**

In the District Court of Lushoto, the appellant was arraigned for arson, contrary to section 319(a) of the Penal Code, Chapter 16 of the laws R.E. 2002(the Code). The particulars on the charge sheet were that on the 10<sup>th</sup> May, 2016, at Joegertal area, within Lushoto District, the appellant,

willfully and unlawfully, set fire to the house belonging to a certain Francis Lyamuya.

When the case was called before the trial court for preliminary hearing, the charge was read over and explained to the appellant and, this is what transpired in Court:-

**"PLEA OF AN ACCUSED:**

*It is true that I set fire unlawfully to the house of Mr. Francis.*

*Sgd:- K. M. Saguda, RM.*

*26/05/2016*

**"PUBLIC PROS:**

*Since the accused person pleaded to the charge against him, I pray to read over the facts of the case as per section 192(1) of the Criminal Procedure Act Cap. 20 Revised Edition 2002.*

*Sgd:- K. M. Saguda, RM.*

*26/05/2016*

**"FACTS HEARING OPENS**

1. That, accused person namely Jackson Didas@ Machange a resident of Jegestal Lustoto

**Accused:** It is true that the said particulars are mine

2. That, accused person lives with his parents at Jegestal street at Lushoto

**Accused:** It is true that I live with my parents.

3. That accused person did willfully set fire on the house of one Francis Lyamuya on 10<sup>th</sup> day of May, 2016.

**Accused:** It is true that I set fire to the said house.

4. That, soon after set fire on the said house, he did escape or ran away in order to escape arrest but on 12/05/2016 accused person arrested an sent him to the Lushoto Police station.

**Accused:** It is true that I escaped soon after event.

5. Person taken his caution statement by G. 42.49 d/c Joseph and he did confessed that he set fire on the said house.

**Accused:** It is true that my confession statement was taken by the said police officer.

6. That on 13/05/2016 accused brought before this court and read over the charge against him who asked to plead thereto, accused pleaded not guilty to the offence whereas the case adjourned till today 26/05/2016 whereas the accused reminded his charge and confessed to all facts.

**Accused:** It is true that previously I denied the charge but now I confess that I committed the offence.

*Sgd:- K. M. Saguda, RM.*

*26/05/2016*

**Court:** Facts sheet tendered in this court is hereby adopted and formed part of the court proceedings.

*Sgd:- K. M. Saguda, RM.*

*26/05/2016"*

In the upshot, the appellant was found guilty on the facts, convicted and handed down the statutory maximum sentence of life imprisonment. He was aggrieved but, on appeal, the High Court (Aboud, J.) found no cause to vary the conviction and sentence. Still dissatisfied, the appellant

presently seeks to impugn both verdicts below through a memorandum which is comprised of two points of grievance.

At the hearing before us, the appellant was fending for himself, unrepresented, whereas the respondent Republic had the services of two learned State Attorneys, namely, Mr. Waziri Makumbo and Ms. Regina Kayuni. When asked to elaborate his grounds of appeal, the appellant opted to let the State Attorneys speak first and retained his right to rejoin, if need be.

For her part, Ms. Kayuni supported the appeal particularly on account of the fact that the plea was solicited during preliminary hearing to which no memorandum of undisputed matters was drawn to bless the exercise.

To say the least, we entirely subscribe to the views of the learned State Attorney and hold that the procedure adopted by the trial court was highly irregular and cannot be the basis of an unequivocal plea of guilty. To that end, we are constrained to invoke our revisional jurisdiction under section 4(2) of the Appellate Jurisdiction Act, Chapter 141 of the laws R. E. 2002 (the AJA). In fine, the conviction and sentence are, respectively, quashed and set aside. It is noteworthy that the respondent as well as the

appellant have blessed such course but left to the Court to determine the way forward. In that regard, we think it will be in the best interests of justice to remit the matter to the trial court to enable the appellant to plead afresh before another Magistrate of competent jurisdiction. In the meantime, the appellant should remain in custody awaiting the resumption of the trial proceedings.

**DATED** at **TANGA** this 27<sup>th</sup> day of February, 2019.


K. M. MUSSA  
**JUSTICE OF APPEAL**

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

R. K. MKUYE  
**JUSTICE OF APPEAL**



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

  
E. Y. Mkwizu  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL (T)**