

IN THE COURT OF APPEAL OF TANZANIA

AT BUKOBA

(CORAM: MMILLA, J.A., MZIRAY, J.A., And KWARIKO, J.A.)

CRIMINAL APPEAL NO. 424 OF 2018

ELIZEUS JOSEPH APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania, at Bukoba)

(Kairo, J.)

dated the 22nd day of March, 2018

in

(DC) Criminal Appeal No. 41 of 2017

.....

JUDGMENT OF THE COURT

26th & 29th November, 2019

KWARIKO, J.A.:

The appellant, Elizeus Joseph, was arraigned in the Resident Magistrate's Court of Kagera at Bukoba with three counts, namely; rape contrary to Section 130 (1)(2)(e) and 131 (1), burglary contrary to section 294 (1) and (2) and stealing contrary to section 265 all preferred under the Penal code [CAP 16 R.E. 2002]. For the purpose of hiding the identity of the victim of the sexual offence, we shall only refer her as 'YZ'. It was alleged by the prosecution that on the 11th day of May, 2015 at or about

01:00 hours at Omunjoki hamlet in Kashekya village within Missenyi District in Kagera Region, the appellant broke and gained ingress into the house of 'YZ', a woman aged 75 years, raped her and stole various types of items all total valued at TZS 67,000.00, the property of 'YZ'.

Having denied the charge, the appellant was fully tried. At the end of the trial, the appellant was found guilty in all counts, he was convicted and sentenced to thirty (30) years in the first count and three (3) years imprisonment each in the second and third counts. The sentences were ordered to run concurrently. The appellant was aggrieved with that decision but his appeal which he preferred to the High Court was dismissed for want of merit. Still protesting his innocence, the appellant has filed this second appeal.

In his memorandum of appeal before this Court, the appellant raised ten (10) grounds. However, because the decision of the Court is premised on an irregularity, we find no need to reproduce the grounds of appeal.

When the appeal was called upon for hearing, the appellant appeared in person, unrepresented while Ms. Chema Maswi, learned State Attorney, appeared for the respondent/Republic.

Upon taking the stage to argue his appeal, the appellant adopted his grounds of appeal without further explanation and left to the State Attorney to respond first. However, before Ms. Maswi responded to the grounds of appeal, the Court wanted to satisfy itself on the legality of the judgment of the trial court, regard being had to it being prepared and delivered by a Law School Student. We thus invited the parties to address us on that issue.

In her address, Ms. Maswi argued that, the judgment of the trial court was illegal and thus a nullity for being prepared by a Law School Student. She argued that this omission contravened section 312 (1) of the Criminal Procedure Act [CAP 20 R.E. 2002] (the CPA). The learned counsel went on to contend that the Law School Student was neither a judicial officer nor an employee of the Judiciary. In the circumstances, Ms. Maswi, urged us to invoke the revisional powers under section 4 (2) of the Appellate Jurisdiction Act [CAP 141 R.E. 2002] (the AJA) and quash the proceedings, decision and conviction and set aside the sentences against the appellant, together with the proceedings of the High Court. She

further implored us to order retrial of the case before a different Magistrate.

On his part, the appellant being a lay person, only said that he had no objection to the proposed resolve. However, he complained that retrial of the case should be expedited as he has been in custody for about five years now.

Upon perusal of the trial court's judgment at page 41 of the record of appeal, we found the following passage: -

"Judgment delivered and prepared by Gisera Maruka a Law School Student under my supervision this 28th day of James, 2016 (sic) in Camera in the accused presence and the prosecution.

***Sgd. C. S. Uiso – RM
28/1/2016."***

We are therefore of the considered view that, the person who was assigned to write the judgment was not a judicial officer. Section 312 (1) of the CPA in relation to the content of judgment provides that: -

Every judgment under the provisions of section 3111 shall, except as otherwise expressly provided by this Act, be written by or reduced to writing

under the personal direction and superintendence of the presiding judge or magistrate in the language of the court and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding officer as of the date on which it is pronounced in open court.

Although this provision says that, a judgment can be reduced to writing under the personal direction and superintendence of the presiding judge or magistrate, we think it applies to judicial officers or employees of the Judiciary where there is proper supervision by a judge or magistrate.

In the present case, the person who is said to have prepared and delivered the judgment was neither a judicial officer nor an employee of the Judiciary. We are therefore of the view that, the trial magistrate had no authority to assign the writing of the judgment to such a person. As a result, such judgment was illegal and therefore a nullity. We therefore invoke our revisional powers under section 4 (2) of the AJA on the basis of which we quash the conviction by the trial court and set aside the sentences and the proceedings and judgments of the two courts below. We

proceed to order a retrial of the case by a different Magistrate of competent jurisdiction.

Taking into account that this is an old case and the appellant has been behind bars for almost five years now, we direct that it be heard and concluded expeditiously. In the meantime, the appellant should remain in custody pending exaction of putting the process in force.

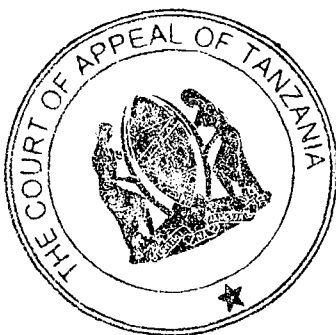
DATED at **BUKOBA** this 28th day of November, 2019.

B. M. MMILLA
JUSTICE OF APPEAL

R. E. MZIRAY
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

The Judgment delivered this 29th day of November, 2019 in the presence of appellant and Mr. Njoka, learned Senior State Attorney for the Respondent/Republic is hereby certified as a true copy of the original.




B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL