

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MWANZA**

**CORAM: MKUYE, J.A. GALEBA, J.A. And RUMANYIKA, J.A.)**

**CRIMINAL APPEAL NO. 256 OF 2018**

**LIGWA BULUNDA ..... APPELLANT**

**VERSUS**

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

**(Appeal from the Judgment of the High Court of Tanzania  
at Mwanza)**

**(Bukuku, J.)**

**dated the 6<sup>th</sup> day of June, 2018**

**in**

**Criminal Sessions Case No. 125 of 2011**

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**JUDGMENT OF THE COURT**

5<sup>th</sup> & 13<sup>th</sup> May, 2022

**MKUYE, J.A.:**

The appellant, Ligwa Bulunda was arraigned before the High Court of Tanzania (Mwanza Registry) on a charge of murder contrary to section 196 of the Penal Code, [Cap. 16 R.E. 2002, now R.E. 2019] (the Penal Code). It was alleged that, on 7<sup>th</sup> November, 2010 at about 02:00 hours at Masawe Village within Misungwi District and the Region of Mwanza, the appellant murdered, one, Yose Bulunda. The appellant denied the charge and upon a full trial, he was found guilty, convicted and sentenced to a mandatory punishment of death by hanging. Aggrieved, he has appealed to this Court.

On 20<sup>th</sup> April, 2022 the appellant's advocate, one Geoffrey Kange, lodged a memorandum of appeal consisting three grounds of appeal as follows:

*"(1) That, the recording of evidence at the trial was irregular due to the failure by the trial judge to append her signature at the end of the testimony of every witness.*

*(2) The summing up to the assessors was irregular due to the failure by the trial judge to address them on vital points of law.*

*(3) That, the learned trial judge erred in law by failing to hold that; the evidence adduced by the prosecution did not prove the case beyond reasonable doubt."*

Yet, on 27<sup>th</sup> April, 2022, the learned advocate lodged a supplementary memorandum of appeal on a single ground of appeal as follows:

*"That, the learned trial judge erred in law by convicting the appellant upon extra judicial statement which was irregularly procured and wrongly admitted."*

When the appeal was called on for hearing, the appellant was represented by Mr. Geoffrey Kange, learned advocate, whereas the respondent Republic had the services of Ms. Magreth B. Mwaseba, learned State Attorney.

From the outset, Mr. Kange sought to argue the 1<sup>st</sup> ground in the substantive memorandum of appeal relating to failure by the trial judge to append signatures at the end of witness' evidence while abandoning the remaining grounds. He submitted that in terms of section 210 (1) (a) of the Criminal Procedure Act, [Cap 20 R.E. 2019] (the CPA), the trial Magistrate or Judge is required to sign at the end of each witness' evidence. However, he argued that the record of appeal shows that the trial Judge did not sign at the end of witnesses' evidence. He took us at page 13 where Amosi Seka (PW1) began to testify up to page 14 of the record of appeal and pointed out that the trial Judge did not sign after the witness concluded his testimony. He argued further that the same happened to Fratern William Temba (PW2) as shown at page 14 up to page 17 of the record of appeal where again the trial Judge did not sign. He further pointed out that, No. D3350 D/Cpl. Ndosha (PW3) whose testimony appears at pages 21 up to 24 of the record of appeal was not signed. He also submitted that the same happened to the evidence of Dr. Gasper Lugela (PW4) on pages 47 to 50 of the record of appeal. He went on to submit that, even the evidence of appellant who testified as DW1 at pages 51 to 54 of the record of appeal was not signed after he had concluded to testify.

Mr. Kange further submitted that he made effort to peruse the original file but it revealed the same position. In this regard, he contended that the effect of failure to append signatures after the end of witness' evidence rendered the proceedings nullity. He therefore, while relying on the case of **Mohamed Nuru Adam and 6 Others v. Republic**, Criminal Appeal No. 130 of 2019 (unreported), urged the Court to invoke its revisional powers under section 4 (2) of the Appellate Jurisdiction Act, [Cap. 141 R.E. 2019] and nullify the proceedings, quash the conviction and set aside the sentence meted out against the appellant and order that the matter be retried by another Judge and a new set of assessors.

In response, Ms. Mwaseba at first argued that there was nothing wrong for the trial Judge not signing at the end of each witness' evidence because unlike to the Magistrates under section 210 of the CPA, it was not a requirement for the Judge to do so. However, on a reflection, she conceded to what was submitted by Mr. Kange that the matter be ordered for a trial *denovo*.

We have considered the submissions from both sides. The issue for this Court's determination is whether the witness' testimonies were not signed by the trial judge and if the answer is in the affirmative, what would be the way forward.

As was rightly contended by Mr. Kange, section 210 (1) (a) of the CPA gives guidance in imperative terms on the appendance of signatures after the closure of every witness' testimony. The said section provides as follows:

*"210 (1) in trials, other than under section 213, by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner:*

*(a) **the evidence of each witness shall be taken down in writing in the language of the Court by the magistrate or in his presence and hearing and under his personal direction and superintendence and shall be signed by him and shall form part of the record;**"*

*[Emphasis added]*

According to the above cited provision of the law, the presiding magistrate is mandatorily required to ensure that he/she appends his/her signature at the end of each witness' evidence. This is important to ensure that the evidence recorded by such presiding magistrate is authentic. See **Amir Rashid v. Republic**, Criminal Appeal No. 187 of 2018 (unreported).

In relation to the High Court, recording of evidence is provided for under section 215 of the CPA read together with the Criminal Procedure

(Recording of Evidence) (High Court) Rules, G.N. No. 286 of 1956 made under the said section. Section 215 of the CPA provides:

*"215. The High Court may, from time to time, by Rules prescribe the manner in which evidence shall be recorded in cases coming before the court and the evidence or the substance thereof shall be taken down in accordance with these rules."*

Yet, rule 3 of G.N. Nos 28 of 1953 and 286 of 1956 provides that:

*"In all trials of criminal cases before the High Court the record of the evidence of each witness shall consist:*

*(a) a record of memorandum of the substance of the evidence taken down in writing by the judge, which shall not ordinarily be in the form of question and answer but in the form of narrative;*

*(b) a type written transcript of shorthand record of the evidence, made in accordance with the provisions of rule 4 and 5 of these Rules; or*

*(c) partly a record or memorandum made in accordance with paragraph (a) of this rule and partly a type written transcript made in accordance with paragraph (b) of this rule."*

Admittedly, as Ms. Mwaseba tried to intimate to the Court, the above provisions, unlike in section 210(1) (a) of the CPA, do not, leave

alone in mandatory terms, require the trial Judge to append his/her signature after the end of each witness' testimony.

Despite the fact that the said provisions do not require the trial Judge to sign at the end of each witness's testimony, the Court in the case of **Yohana Mussa Makubi v. Republic**, Criminal Appeal No. 556 of 2015 (unreported) borrowed a leaf from section 356 of the Indian Criminal Procedure Code which is in *parimetria* with section 210 (1) (a) of the CPA and acknowledged that what was provided under the law in India, was a well established rule of practice as part of the procedure in the proper administration of criminal justice before the High Court in Tanzania. In the said case, the Court relied on the case of **Laurent Salum and 5 Others v. Republic**, Criminal Appeal No. 176 of 1993 (unreported), regarding the issue of that long-established rule of practice.

In the end, the Court in the former case, found that the issue of signing after the end of every witness's evidence is a long-established practice which the trial Judge ought to observe.

In the instant case, we agree with both counsel that according to the record of appeal, the trial Judge did not append her signature at the end of the testimony of each witness who testified in the case. As was rightly argued by Mr. Kange, PW1 testified from page 13 to 14 but at the end of his testimony at page 14 of the record of appeal, the trial Judge

did not append her signature. Similarly, PW2's testimony from page 14 to 17 including his testimony during trial within trial in between, was not signed by the trial Judge after the end of the said testimony. The same applied to the testimony of PW3 appearing at pages 21 up to 23 (the trial within trial proceedings inclusive) whereby the trial Judge did not append her signature after the witness had completed to adduce his evidence. Equally, to the last prosecution witness (PW4) whose evidence is on pages 47 to 50 of the record of appeal. After the completion of his testimony, the trial Judge did not sign. Even the appellant's evidence was not spared. The record of appeal bears out that the appellant's testimony at pages 51 to 54 of the record of appeal up to the end of his testimony, there is no signature of the trial Judge. We have had an opportunity of perusing the original record of the trial court and we have observed that, indeed, the trial Judge did not append her signature after the conclusion of each witness' evidence. The trial Judge only signed when she issued an order for the next events.

In the case of **Sabasaba Enos @ Joseph v. Republic**, Criminal Appeal No. 411 of 2017 (unreported), when the Court was confronted with akin situation, it relied on the case of **Yohana Mussa Makubi** (supra) where it had stated as follows:



*"We are thus satisfied that the failure by the judge to append his/her signature after taking down the evidence of every witness is an incurable irregularity in the proper administration of criminal justice in this country. The rationale for the rule is fairly apparent as it is geared to ensure that the trial proceedings are authentic and not tainted. Besides, this emulates the spirit contained in section 210(1) (a) of the CPA and we find no doubt in taking inspiration therefrom".*

[See also: **Chacha Ghati Magige v. Republic**, Criminal Appeal No. 406 of 2017 and **Moses Edward v. Republic**, Criminal Appeal No. 599 of 2017 (both unreported)].

Applying the above cited authority, we are satisfied that the trial Judge erred in not appending her signature at the end of testimonies of PW1, PW2, PW3, PW4 and DW1. This means that the assurance of the authenticity of the trial court's proceedings is missing. It cannot be ascertained whether the same are authentic and therefore not tainted. Such proceedings, therefore, cannot be taken as material for determination of this appeal. It goes without saying that the trial Judge's failure to append signatures after recording the witnesses' evidence amounted to an irregularity which is incurable in terms of section 388 of

the CPA. It is without question that the omission has vitiated the entire proceedings of the trial court and, hence, a nullity.

In the result, we allow the appeal on the lone ground of appeal and nullify the proceedings from 13<sup>th</sup> March, 2014 and judgment, quash the conviction and set aside the sentence meted out against the appellant. We further order that, given the circumstances of the case, the matter be retried by another judge in accordance with the law. In the meantime, the appellant shall remain in custody.

**DATED** at **MWANZA** this 13<sup>th</sup> day of May, 2022.

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

Z. N. GALEBA  
**JUSTICE OF APPEAL**

S. M. RUMANYIKA  
**JUSTICE OF APPEAL**

The Judgment delivered this 13<sup>th</sup> day of May, 2022 in the presence of Mr. Emmanuel Sayi holding brief for Mr. Godfrey Kange, learned counsel for the appellant and Mr. Emmanuel Lvinga, learned Senior State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.



  
A. L. KALEGEYA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**