

**IN THE COURT OF APPEAL OF TANZANIA  
AT MBEYA**

**(CORAM: MKUYE, J.A., GALEBA, J.A. And KIHWELO, J.A.)**

**CRIMINAL APPEAL NO. 162 OF 2019**

**ANGULILE JACKSON @ KASONYA ..... APPELLANT**

**VERSUS**

**DPP ..... RESPONDENT**

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

**(Mongella, J.)**

**dated the 10<sup>th</sup> day of April, 2019**

**in**

**Criminal Appeal No. 126 of 2018**

.....

**JUDGMENT OF THE COURT**

15<sup>th</sup> & 24<sup>th</sup> February, 2022

**MKUYE, J.A.:**

Before the Resident Magistrates' Court of Mbeya Region at Mbeya, the appellant Angulile Jackson @ Kasonya was charged with an offence of armed robbery contrary to section 287A of the Penal Code, [Cap. 16 R.E. 2002; now R.E. 2019] (the Penal Code). The particulars of offence were crafted as follows:

**"PARTICULARS OF OFFENCE.**

*Angulile Jackson @ Kasonya on the 10<sup>th</sup> day of August, 2016 at Mwamfupe area within the District and Region of Mbeya did steal Tshs. 6,000/= (six thousand shillings only) the property of one ANDREW ADAM @*

*MWAKATOBÉ and immediately before and after such stealing, he used dangerous and offensive instrument to wit, a sharp object in order to obtain and retain the said property."*

When the charge was read over to the appellant, he pleaded not guilty. Thereafter, a trial commenced and at the end, the appellant was convicted of the offence of armed robbery contrary to section 287A of the Penal Code and was sentenced to thirty years imprisonment.

Dissatisfied with the decision of the trial court, the appellant appealed to the High Court but his appeal was dismissed for want of merit. Still protesting his innocence, he has appealed to this Court on nine (9) grounds of appeal which for reason to become apparent in the due course, we shall not reproduce them.

The facts leading to the appellant's conviction are to the following effect. On 10<sup>th</sup> August, 2016, Andrew Adam Mwakatobe (PW2) was walking on his way to his home from his usual errands of selling second hand clothes. When he reached at a place called Mafiati, a certain person who turned out to be the appellant accosted him by blocking his way while demanding to be given money. PW2 replied to him that he had no money. He then shoved the appellant aside and proceeded with his journey. The appellant did not despair, he followed him. When PW2 turned back, the

appellant stabbed him in the right eye with a sharp object. PW2 lost consciousness and upon waking up, he found that his money Tshs. 6,000/= was missing and his eye severely injured. He went home and relayed to Joyce Ifwani, his mother (PW3) what happened to him and efforts were made to have him taken to hospital where unfortunately, the eye was found to be ruptured and was removed.

Then the appellant was arrested after being mentioned by PW2 and later arraigned before the court as alluded to earlier on.

In his defence, the appellant gave a very brief testimony contending that the offence was committed while he was in remand prison.

At the hearing of this appeal, the appellant appeared in person without any representation; whereas the respondent Republic enjoyed the services of Ms. Nancy Mushumbusi, learned State Attorney.

When the appellant was availed with opportunity to amplify his grounds of appeal, he sought to adopt his grounds of appeal and opted to let the learned State Attorney respond first while reserving his right to rejoin later, if need arises.

At the outset, Ms. Mushumbusi sought and leave was granted for her to address us on the issue of defectiveness of the charge sheet. She prefaced his submission by stating that the appellant was charged with

armed robbery contrary to section 287A of the Penal Code. She contended that among the facts in the particulars of offence show that after stealing, the appellant used offensive instrument or sharp object in order to obtain and retain the stolen property. However, she explained that the particulars do not show the person to whom the threat or violence was directed. It was her argument that in the offence of armed robbery the person to whom the threat was directed ought to have been shown. To bolster her argument, she referred us to the case of **Hassan Idd Shindo and Another v. Republic**, Criminal Appeal No. 324 of 2018 (unreported).

She submitted further that since such ingredient was not indicated in the charge sheet, such omission was fatal with the effect of being prejudicial to the appellant as he could not be in a position to know what he was supposed to defend himself. She said that the trial was, therefore, unfair.

In this regard it was her contention that the anomaly rendered the proceedings and judgments of the courts below a nullity and for that reason she implored the Court to allow the appeal, quash the conviction, set aside the sentence and release the appellant forthwith from custodial sentence.

On his part, the appellant had nothing to add.

We have considered the argument of the learned State Attorney on that aspect. Our starting point would be to revisit the provisions of section 287A of the Penal Code to which the appellant was charged with. The said provision provides as follows:

*"287A. A person who steals anything, and at or immediately before or after stealing is armed with any dangerous or offensive weapon or instrument and at or immediately before or after stealing **uses or threatens to use violence to any person in order to obtain or retain the stolen property**, commits an offence of armed robbery and shall on conviction be liable to imprisonment for a term of not less than thirty years with or without corporal punishment."*[Emphasis added].

Our reading of the above cited provision shows that one of the ingredients of the offence of armed robbery is that there must be a threat or use of violence to a person against whom the offence is committed so as to obtain and retain the stolen property. This is in tandem with the provisions of section 132 of the Criminal Procedure Act [Cap 20 R.E. 2019] (the CPA) requiring that every charge or information must contain a statement of the specific offence to which the accused is charged together with particulars that may be necessary in giving a reasonable information to the accused regarding the nature of the offence charged. On top of

that, it goes in line with section 135 (a) (ii) of the CPA which prescribes the form and content of the charge and information. In particular, the said provision requires the particulars of the offence created by enactment to be given in ordinary language; and that the particulars of the offence must give all the essential ingredients establishing the offence – (See **Andrew Lonjine v. Republic**, Criminal Appeal No. 50 of 2019 (unreported)).

In the case of **Menziru Amri Mujibu and Another v. Republic**, Criminal Appeal No. 151 of 2012 (unreported), when the Court was faced with a situation where the charge did not disclose the person to whom the threat was directed, it cited its earlier decision in the case of **Kashima Mnadi v. Republic**, Criminal Appeal No. 78 of 2011 (unreported) where it was stated as follows:

*"Having carefully read the charge reproduced supra and the cited section, we are of the settled view that the charge is incurably defective. It is incurably defective because the essential ingredient of the offence of robbery is missing. Strictly speaking for a charge of any kind of robbery to be proper, it must contain or indicate actual personal violence or threat to a person on whom robbery was committed. **Robbery as an offence, therefore, cannot be committed without the use of actual violence or threat to the person targeted to be robbed. So, the particulars of the offence of robbery must not***

***only contain the violence or threat but also the person on whom the actual violence or threat was directed.*** This requirement is provided under section 132 of the Criminal Procedure Act, Cap. 20 R.E. 2002 so that to enable the accused know the nature of the offence he is going to face.”[Emphasis added].

Likewise, in the case of **Juma Maganga v. Republic**, Criminal Appeal No. 427 of 2016 (unreported), the Court while citing the case of **Isidory Patrice v. Republic**, Criminal Appeal No. 274 of 2007 (unreported) emphasized the requirement of stating the essential elements in the particulars of offence. It stated as follows:

*"It is a mandatory requirement that every charge in a subordinate court shall not only contain a statement of the specific offence with which the accused is charged but also such particulars as may be necessary for giving reasonable information as to the nature of the offence charged. **It is now trite law that the particulars of the charge shall disclose essential elements or ingredients of the offence.** The requirement hinges on the basic rules of criminal law and evidence to the effect that the prosecution has to prove that the accused committed the actus reus of the offence with the necessary mens rea. Accordingly, the particulars, in order to give the **accused a fair trial in enabling him prepare his defence, must allege the***

***essential facts of the offence and any intent specifically required by law.***”[Emphasis added].

See also **Atufigwege Dankan Mwangomale v. Republic**, Criminal Appeal No. 168 of 2009; **Tayasari Miseyela v. Republic**, Criminal Appeal No. 250 of 2011; **Marwa Kachang’a v. Republic**, Criminal Appeal No. 471 of 2017; and **Hassan Iddi Shindo** (supra) (all unreported). In particular in the latter case, the Court discussed the import of section 287A of the Penal Code in as far as the ingredients of the offence were concerned and it stated among others that:

*"In our judgment, in the absence of evidence showing that violence was used by the appellants against the said Adam Mwankuga, either immediately before, or after stealing the alleged property with a view to obtaining or retaining the same, we are constrained to hold that the offence of armed robbery was not proven."*

We have taken pains to make reference on a number of authorities so as to show that the necessity of indicating the person to whom the violence or threat was directed in the particulars of the offence in the offence of armed robbery is crucial. In other words, in the charge of armed robbery it is important to show the essential ingredients among them being the name of the person to whom the threat was directed in



the course of the commission of the offence – See **Marwa Kachang’a** (supra).

In this case, the particulars of the offence as shown in the particulars of offence we have recapitulated at the beginning of this judgment indicates that “immediately before and after the appellant had stolen the said Tshs. 6,000/=, he used dangerous and offensive instrument to wit, a sharp object in order to obtain and retain the said property” without mentioning the person to whom such dangerous or offensive instrument was directed to or used against. This means that the charge fell short of disclosing the essential ingredient of the offence of armed robbery.

We, therefore, agree with Ms. Mushumbusi that the charge under consideration is wanting for failure to mention in the particulars of the offence the person to whom the threat or violence was directed at the time of commission of the offence. This omission is fatal and it cannot be cured by section 388 of the CPA. On top of that, going by the dictates of section 132 and 135 (a) (ii) of the CPA, we are enjoined to agree with the learned State Attorney that the omission was prejudicial to the appellant which amounted to an unfair trial to the appellant as he could not be in opposition to prepare his defence. On that basis, we are also inclined to agree with the learned State Attorney that the proceedings and the

judgments of both the trial court and the first appellate court are a nullity and thus liable to be nullified.

As to the way forward, we are constrained to invoke our revisional powers bestowed on us under section 4 (2) of the Appellate Jurisdiction Act [Cap 141 R.E. 2019] and nullify the proceedings and judgments of both the trial court and the High Court, quash the conviction and set aside the sentence imposed against the appellant. We further order that the appellant be released from prison forthwith unless he is otherwise held for other lawful reason(s).

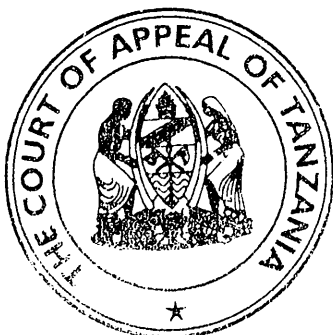
**DATED at MBEYA** this 24<sup>th</sup> day of February, 2022.

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

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

P. F. KIHWELO  
**JUSTICE OF APPEAL**

The Judgment delivered this 24<sup>th</sup> day of February, 2022 in the presence of the Appellant in person and Ms. Rosemary Mgenyi, learned State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.



*C. M. Magesa*  
C. M. MAGESA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**