

**IN THE COURT OF APPEAL OF TANZANIA**

**AT SHINYANGA**

**(CORAM: MWARIJA, J.A., KITUSI, J.A. And MGEYEKWA, J.A.)**

**CRIMINAL REVISION NO. 1 OF 2023**

**MOHAMED KASIMU ..... 1<sup>ST</sup> APPLICANT**

**HUSSEIN SITTA ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

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

**[Revision (*Suo Motu*) from the proceedings and the order of the Resident  
Magistrate's Court of Shinyanga at Shinyanga]**

**(Mbuya, PRM- Ext. Jur.)**

**dated the 18<sup>th</sup> day of September, 2020**

**in**

**Criminal Appeal No. 65 of 2020**

**\*\*\*\*\***

**RULING OF THE COURT**

12<sup>th</sup> & 14<sup>th</sup> July, 2023

**MWARIJA, J.A.:**

This application for revision was opened by the Court *suo motu* on the direction of the Chief Justice following the complaint by the applicants, Mohamed Kasimu and Hussein Sitta (the 1<sup>st</sup> and 2<sup>nd</sup> applicants respectively) who are the appellants in Criminal Appeal No. 65 of 2020. The appeal arose from the decision of the District Court of Shinyanga in Criminal Case No. 165 of 2014. In that case, the applicants and another person, Dogan Joseph, were jointly charged with the

offence of armed robbery contrary to section 287A of the Penal Code, Chapter 16 of the Revised Laws. It was alleged that, on 21/10/2014 at Ndembezi area within Shinyanga Municipality in Shinyanga Region, they stole various properties total valued at TZS. 1,340,000.00, the properties of Rubeni John and immediately at or before doing so, they threatened Pascazia Paulina and Rubeni John with a machete and stick in order to steal the said properties. After a full trial, the said Dogan Joseph was found not guilty and thus acquitted, but the applicants were found guilty, convicted and sentenced each to thirty years imprisonment.

Aggrieved by the decision of the trial court, the applicants appealed to the High Court of Tanzania at Shinyanga raising a total of 8 grounds of appeal. The appeal was transferred to the Resident Magistrate's Court of Shinyanga to be heard by Mbuya, PRM-Ext. Jur. The learned first appellate Magistrate heard the appeal in the absence of the appellants on account that, due to the Covid 19 pandemic at the time, they had requested that their appeal be heard and determined in their absence. The respondent Republic was however, represented by Ms. Caroline Mushi, learned State Attorney who made her submissions in opposition of the appeal.

Having heard the submissions of the learned State Attorney in response to the grounds of appeal, the learned first appellant Magistrate reserved his judgment. According to the record of this application at page 89, the "judgment" was delivered on 18/9/2020 in the presence of Ms. Mushi but in the absence of the applicants. The last order which was recorded by the PRM – Ext. Jur. reads as follows:-

*"Judgment hereby (sic) delivered in the presence of Ms. Caroline (SA), Fatuma (B/C) and in absence of the appellants. Rights of appeal explained".*

Apparently, the applicants were not informed that the judgment of their appeal had been delivered as shown above and therefore, remained in prison awaiting for their fate.

It later transpired however, that the judgment which according to the record, was delivered on 18/9/2020, could not be traced. By her affidavit sworn on 6/7/2022, Fatma Ally, the Court Clerk who was in court on the material date, stated that the learned PRM – Ext. Jur. read the judgment from his laptop computer and that, in his judgment, he dismissed the appeal. As a result, she said, she entered that finding in the relevant register. Further efforts were made to inquire about the

judgment from the learned first appellate Magistrate but were unsuccessful as, according to him, he could not retrieve it from the laptop computer which he was using at the material time because the same had become defective.

The complaint about non availability of the judgment and the fate of the applicants' appeal was forwarded by the Jaji Kiongozi to the Chief Justice who directed the opening of this application for revision.

At the hearing of the application, the applicants appeared in person, unrepresented while on its part, the respondent Republic was represented by Ms. Wampumbulya Shani, learned State Attorney assisted by Mr. Jukael Jairo and Ms. Caroline Mushi, also learned State Attorneys.

Since it was common ground that the underlying cause of the problem giving rise to this application, that is, the unavailability of the judgment which, as pointed out above, is indicated in the record at page 89 as having been delivered by Mbuya, PRM – Ext. Jur. on 18/9/2020, we called upon the parties to address us on the proper move to be taken by the Court. Ms. Shani submitted that, the unavailability of the judgment has prejudiced the applicants because they had been waiting to know about the outcome of their appeal for a long time. She urged us

to nullify the proceedings of the first appellate court together with the orders and decisions arising therefrom, if any and consequently, remit the record to the High Court for the appeal to be heard afresh.

On their part, the applicants blamed the court contending that, it had caused them injustice. The first applicant submitted that, as a result of the mistake made by the first appellate court, he had remained in prison for a period of about 9 years waiting for the fate of his appeal. He thus prayed to be released from prison. The 2<sup>nd</sup> applicant supported the prayer made by the 1<sup>st</sup> applicant reiterating the submission that, since it was the court which mishandled the matter, it would not be proper to order a rehearing of the appeal, instead, the applicants should be set to liberty.

It is an undeniable fact that, from the mishap, the fate of the applicants' appeal was put at halt. The explanation that the judgment in appeal was delivered from a computer but despite the efforts made by the Shinyanga High Court, the same could not be made available either in electronic form or in hard copy, has indeed prejudiced the applicants. To avoid any further delay, we agree with proposition made by the learned State Attorney. As a result, in the exercise of the powers vested in the Court by section 4 (3) of the Appellate Jurisdiction Act, Chapter

141 of the Revised Laws, we hereby nullify the proceedings of the first appellate court and set aside the orders and any decision arising therefrom. Consequently, we order that the record of appeal be remitted to the High Court of Tanzania at Shinyanga for hearing of the appeal afresh. We order further, that the hearing of the appeal should be expedited.

**DATED at SHINYANGA** this 13<sup>th</sup> day of July, 2023.

A.G. MWARIJA  
**JUSTICE OF APPEAL**

I. P. KITUSI  
**JUSTICE OF APPEAL**

A. Z. MGEYEKWA  
**JUSTICE OF APPEAL**

The Ruling delivered this 14<sup>th</sup> day of July, 2023 in the presence of the Applicants in person and Mr. Jukael Reuben Jairo, learned State Attorney for the Respondent/Republic is hereby certified as a true copy of the original.



  
R. W. CHAUNGU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**