

IN THE HIGH COURT OF TANZANIA  
AT DAR ES SALAAM  
(PC) CRIMINAL APPEAL NO. 31 OF 1996  
(Originating from Ilala District Court Cr. Appeal  
No. 50\95 and Buguruni Primary Court Cr. Case  
No. 619\95)

JUMA ALLY	)	
HUSSEIN ALLY	)	APPELLANTS
JUMANNE SELEMANI	)	
RAMADHAN YUSUF	)	

VERSUS

REPUBLIC.....RESPONDENT

J U D G E M E N T

KALEGEYA, J.

The Appellants, Juma Ally, Hussien Ally, Jumanne Sulemani and Ramadhani Yusuf (1st to 4th Appellants respectively) were convicted by Buguruni Primary Court with robbery with violence c/s 285 and 286 of the Penal Code. The 1st and 2nd appellants were each sentenced to one year in jail, while, due to their age, the 3rd and 4th Appellants were conditionally discharged for a period of 12 months. One Mohamed Ally, the complainant victim of the robbery could not stomach such sentence. He subsequently appealed to the Ilala District Court which enhanced the sentence to 15 years imprisonment with an order that they (convicts) should compensate him with shs. 57,000/= for the stolen property. It had been alleged that the accuseds (now appellants) had robbed complainant shs.30,000/=, one Romano wrist watch and one pair of shoes. Finding the District Court's decision stiff the Appellants (Respondents in the District Court) tried their luck with the High Court challenging the conviction and ensuing sentences.

Unfortunately for both parties this court cannot go into the merits of this appeal. This is so because of a profound defect vivid on the record of the primary court which renders the proceedings and ensuing findings and orders a nullity. The said

proceedings violated Rule 3 of The Magistrate's Courts (Primary Courts) (Judgement of the court) Rules, 1988 (GN 2 of 1984) which provides as follows:-

"3(1) Where in any proceedings the court has heard all the evidence or matters pertaining to the issue to be determined by the court, the Magistrate shall proceed to consult with the assessor present, with the view of reaching a decision of the court.

(2) If all the members of the court agree on one decision, the Magistrate shall proceed to record the decision or judgement of the court which shall be signed by all the members.

(3) For the avoidance of doubt a Magistrate shall not, in lieu of or in addition to, the consultations referred to in sub-rule (1) of this rule, be entitled to sum up to the other members of the court.

At the close of the defence case, the trial Magistrate summarised the evidence to the assessors and then invited their opinions in the following words,

"Washauri, mnatakiwa mtoe maoni yenu juu ya hatia ya washitakiwa iwapo mnaona washtakiwa (!) wanayo hatia msisite kuwatia hatiani na mtoe sababu za kuwaona kuwa na hatia na iwapo mtaona hawana hatia msisite kuwatoa hatiani".

The gentlemen assessors then proceeded to give their opinions against which they duly signed. The trial Magistrate then proceeded to record,

**"UAMUZI**

Mimi pia naungana na washauri kuwa washitakiwa wote wanne wanayo hatia ya unyanganyi K\F 285 sura ya 16 K.A. kwa sababu zifuatazo (he then went on to enumerate 3 reasons). This is followed by  
"Hivyo washitakiwa wote kwa pamoja wanayo hatia ya unyanga'nyi.

MAKOSA YA ZAMANI

Washitakiwa wote wanne hawana makosa ya zamani".

This followed by mitigation; then assessors opinion regarding sentence. This in turn is followed by what is headed as,

"Adhabu",

and finally by

HUKUMU (!)

Apart from a jumbled record, and violation of Rule 3, even the conviction is not signed neither by the Magistrate nor the assessors! It is as clear as day light that there is no judgement according to law. This situation leads to only one consequence - proceedings of both lower Courts being declared a nullity. Generally, in such situations a trial de novo is ordered (PC) Civil Appeal No. 6\97 Ibrahim Said, Dsm HC Registry - unreported).

I have seriously considered this usual course but I have finally reached a conclusion that it is not in the interest of justice to so (trial de novo) direct in the present case. The Appellants have so far spent over three years in prison. For this reason, the lower courts' proceedings are declared a nullity, and consequently the convictions and sentences flowing therefrom. Appellants to be set at liberty unless otherwise lawfully held.

(L. B. Kalegeya)

JUDGE

Judgement delivered today the 15\1\99 in the presence of Mr. Mdeme, State Attorney.