IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

APPELLATE JURISDICTION

HC. CRIMINAL APPEAL NO. 06 OF 2007
(Original Cr. Case No. 337 of 2006 of the District Court of Bunda District at Bunda Before. R. B. Maganga DM)

SUKARI MARWA .....APPELLANT

Versus

THE REPUBLIC .....RESPONDENT

JUDGMENT

27.10.2008 – 30.10.2008

G. K. RWAKIBARILA. J

The appellant **Sukari s/o Marwa** was charged and convicted of two counts on his own plea of guilty in Bunda District Court Criminal Case No. 337 of 2006. The first count was obstructing a District Health Officer from executing his duties c/s 243 (e) of the Penal Code, Cap 16 where he was sentenced to serve five years imprisonment. And in the second count he was charged of common assault c/s 240 of the same code where he was sentenced to two years imprisonment. He felt aggrieved by both conviction and sentence and lodged this appeal.

Mr. Kajungu, learned state attorney who represented the Republic was of the view that the appellant had no legal right to dispute the convictions because he pleaded guilty to both counts. The learned state attorney was right on that view because the

records of the trial court show how the trial magistrate recorded correctly all necessary steps in the proceedings in Criminal case No. 337 of 2006 before he entered the plea of guilty. He also recorded properly appellant's replies before the convictions were entered. Therefore conviction of appellant in both counts was proper and his appeal against the same is dismissed.

However Mr. Kajungu did not support sentences which were passed in both counts. The learned state attorney drew to attention of this court that the maximum sentence for an offence under section 243 (e) of that Code is five years. He put it that for the first offender like this appellant, it was not proper to pass the maximum sentence.

On the sentence for the second count under section 240 of that code, Mr. Kajungu pointed out that the sentence of two years was illegal because the maximum sentence is only one year imprisonment. The sentence which exceeds what is stated under the Law is illegal as Mr. Kajungu pointed out. Therefore the sentence for the second count is quashed for the purpose of substituting it with the appropriate one.

Before deliberating on which are proper sentences for the first and second counts, it is proper at this stage to point out that this appeal (with No. 6 of 2007) originated from Bunda Criminal case No. 337 of 2006. But this appeal was consolidated with an appeal with No. 2 of 2007 which originated from Bunda criminal case No. 336 of 2006. Hon. Rweyemamu, J had the opportunity to read thoroughly records of both appeals before this hearing stage and on 20.02.2008

made a ruling which resulted to their consolidation after she opined that the said criminal cases No. 336 and 337 were framed from the same matter. That means the decision in this appeal shall be made available in records for criminal Appeal No. 2 of 2007.

The rest to consider is the sentence for both counts. Records of the trial court don't expose sufficient reasons to award the maximum sentence of five years in the first count for the first offender. The sentence for the first count is reviewed and reduced to one year imprisonment. And the sentence for the second count shall be nine months imprisonment. Sentences for both counts shall run concurrently and therefore appellant shall serve the total sentence of one year imprisonment, accruing from 21.11.2006 when he was convicted and sentenced.

G.K. RWAKIBARILA
JUDGE

Date: 29/10/2008

Coram: Hon G.K. Rwakibarila, J

Appellant: Present in person

For Republic: Mr. Mauma, SA, for Republic

B/C: A. Kaserero

Court: Judgement delivered at Mwanza this 30th day of October 2008 and right to appeal in time has been explained

G.K. Rwakibarila
JUDGE

At Mwanza
30/10/2008