

IN THE HIGH COURT OF TANZANIA

AT TABORA

APPELLATE JURISDICTION

(Tabora Registry)

(DC) CRIMINAL APPLICATION NO. 8 CF 9 OF 2012

ORIGINAL CRIMINAL CASE NO. 19 OF 2006

ON THE DISTRICT COURT OF MEATU DISTRICT

AT MEATU

BEFORE: N.N. KASERERO -RESIDENT MAGISTRATE

TABU S/O JOSEPH & ANOTHER APPELLANTS

VERSUS

KIJA S/O MALIGANYA RESPONDENT

J U D G M E N T

HON. S. B. LUKELELWA, J.

The appellants Wilwa Kashinje and Tabu Joseph hereinafter variously referred to as the first appellant and the second appellant were prosecuted to conviction by Kija Maliganya in the Primary Court of Meatu District at Mwandoya on a charge of three counts namely:- 1st Count. Armed Robbery contrary to section 286 of the Penal Code, 2nd Count: Assault Causing Actual Bodily harm contrary to section 241 of the Penal Code. (3) Stealing Contrary to section 265 of the Penal Code.

The appellant were each sentenced to thirty years imprisonment on the first count, six months imprisonment on the second count and six month imprisonment on the third count.

The sentences were ordered to run concurrently. That was on 07.06.2006.

The appellants were aggrieved by both the convictions and sentences imposed on them by the trial Primary Court.

The appellants prepared a petition of appeal through the in-charge Maswa Prison. The petition of appeal was on 20.06.2006 transmitted to Meatu District Court at Mwanhuzi where it as received on 03.07.2006.

The appellant lodged the appeal against the Republic. The appeal was dismissed on 16.10.2006 for want of merit.

The appellants are undaunted, and have come to this court in a second appeal.

I have noted hat the appellants' had lodged the appeal against a wrong party. The republic was not a party at the trial Primary Court.

The parties are obliged to maintain their status right from the trial Primary Court to the highest court of the land, namely the Court of Appeal of Tanzania.

By citing the Republic as the respondent in the District Court when it was not a party before the trial Mwandoya Primary Court it was as if there was no appeal at all.

I therefore invoke supervision powers of this court under section 30 (1) (a) (b) (1) of the Magistrates' Courts Act and revise the proceeding of Meatu District Court by quashing the proceedings of that District Court.

It is directed that the appellants re-lodge their petitions of appeal afresh to Meatu District Court at Mwanhuzi this time against the original Prosecutor Kija s/o Maliganya; as the Respondent.

It is so ordered.


S. B. LUKELELWA,
JUDGE.

28th May, 2013

Date: 20/05/2013

Coam: Hon. S. B. Lukelelwa, J.

1st Appellant }

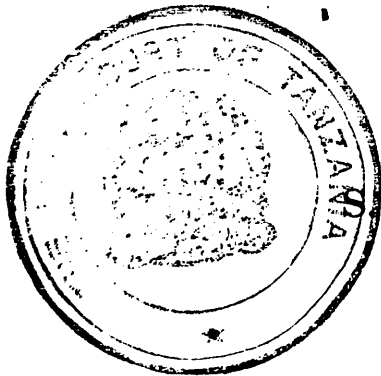
2nd Appellant } Present

Respondent: Absent

B/C: Mary Mpululu

Order: Judgment delivered in Court this 28th May 2013.

Right of Appeal explained.




B. LUKELELWA,

JUDGE.

28th May, 2013