

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

CRIMINAL APPEAL NO. 50 OF 2018

(Originating from RM's Court of Arusha, Criminal Case No. 347 of 2016)

SAMWEL IBRAHIM.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

MAIGE, J

At the Resident Magistrates Court of Arusha ("the trial court") , the appellant was charged with and found guilty of the offence of unnatural offence contrary to section 154 (1) (a) (2) of the Penal Code, Cap. 16 R.E 2002. He was sentenced to 30 years imprisonment. Being aggrieved, he has lodged the instant appeal challenging both the conviction and sentence of the **trial court** in many respects. For the reason which shall be obvious in due course, I will consider only grounds numbers 5th and 7th in the memorandum of appeal wherein the legality of the judgment is questioned for non-compliance of the mandatory provisions of section and 312 (2) of the Criminal Procedure Act, Cap. 20 R.E 2002 ("the CPA").

The appeal was argued by way of written submissions. Advocate Allen Godian who prosecuted the appeal filed the written submissions in support of the appeal whereas Mr. Azael Mweteni, learned state attorney, who represented the respondent, filed counter submissions.

The submissions of Advocate Allen Godian in support of the 4th and 7th grounds of appeal was very brief and straightforward. He contended that the judgment of the **trial court** did comply with the mandatory requirements under section 312 (2) of the **CPA** which provides that;

"In the case of conviction, the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted and the punishment to which he is sentenced."

He clarified that, the judgment neither specified the offence nor the section of the law under which the appellant was convicted. Besides, it did not contain the reason for the decision. I was referred to the case of **Edwin Isidori Elias Vs. Serikali ya Mapinduzi Zanzibar**(2004) TLR 297 in support of the view that non-compliance with the said requirement vitiates the conviction and sentence. He thus urged the Court to nullify the conviction on that account, among others.

Resisting the fourth and seventh ground of appeal, Mr. Mweteni submitted that the conditions set out in the respective provision was complied with. He thus urged the Court to dismiss the appeal.

That a criminal judgment must comply with the provision of section 312 (2) of the **CPA** is not at issue; whether the same has complied with the provisions is that which the parties are seriously contentious. Section 312(2) of the **CPA** provides as follows;

*"In the case of conviction the judgment **shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted** and the punishment to which he is sentenced"* (emphasis supplied)

Apparent from the quoted provision is that for a convicting judgment to amount to a proper judgment, it must *inter alia* specify the offence and section of the Penal Code or other law under which the accused person is convicted.

In the instant case, the **trial court** did not at all comply with that requirement. In the last paragraph of the judgment which contains the conviction statement, the trial magistrate just stated that; *"this court finds the accused guilty and consequently convicted"* (*sic*). Convicted for what offence and against which provision of law, the judgment is mute. In

my judgment, it was imperative for the **trial court** to specify the offence the accused is convicted with and section of law that has been violated. Omission to comply with the respective provision of the law, it is trite law, is fatal to the conviction and sentence. There are many judicial pronouncements in support of that proposition. For instance, **John s/o Charles vs The Republic**, Criminal Appeal No. 190 of 2011, Court of Appeal at Tabora (unreported) it was stated that;

"Judgment writing in subordinate courts is governed by sections 235 and 312 of the CPA Cap 20 R.E. 2002."

For the above reasons therefore, I find that the fourth and seventh grounds of appeal are meritorious and to extent the appeal is allowed. The judgment of the **trial court** is declared null and void for reasons above stated. It is accordingly set aside and the conviction thereof quashed. The case is hereby remitted to the **trial court**. The trial magistrate is hereby to write the judgment in due compliance with the requirement of section 312 (2) of **CPA** and redeliver the same. In the meantime, the appellant shall remain in prison.

Order accordingly.

SGD: I. MAIGE

**JUDGE
28.11.2018**

Date 28.11.2018

Coram Hon. S.M. Kulita, Dr.

For the appellant: Allen, advocate

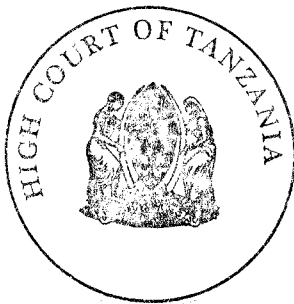
For the respondent: Miss. Blandina.

B/C Mariam

Court: Judgment delivered

SGD: S. M. KULITA
DEPUTY REGISTRAR
28.11.2018

I hereby certify this to be a true copy of the Original.




S. M. KULITA
DEPUTY REGISTRAR
ARUSHA
30/11/2018