

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 85 OF 2017

(Original from District Court of Rufiji at Rufiji
Criminal Case No. 150 of 2016)

ABEID SEIF MBWANA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

MURUKE, J.

When the matter came for hearing court suo moto raised an issue of law, that charge sheet levied at the trial court was defective. Learned State Attorney Debora Mushi for the respondent conceded to the defect. She submitted that charge sheet supposed to be armed robbery c/s 287A of the Penal Code as amended by Act No. 3 of 2011 and not section 287A of Penal Code Cap. 16 R.E. 2002.

This court was confronted with a similar situation like the one under scrutiny in ABDALLA ALLY VS REPUBLIC, CRIMINAL

APPEAL NO. 253 OF 2013 (unreported). The court observed as follows:

"...being found guilty on a defective charge based on wrong and/or non-existent provisions of the law, it cannot be said that the appellant was fairly tried in the courts below..."

The court went ahead and decided that:

"In view of the foregoing shortcomings, it is evident that the appellant did not receive a fair trial in court.... The wrong and or non-citation of the appropriate provision of the Penal Code under which the charge was preferred, left the appellant unaware that he was facing a serious charge of rape"

In another case of **SIMBA NYANGURA VS REPUBLIC, CRIMINAL APPEAL NO. 144 OF 2008**, the appellant was charged under section 130(1) and 131 of the Penal Code, the Court observed that, the accused person must know under which of the description in section 130(1) (a) to (e) the offence he faces fall, so that he can prepare for his defence. As the court further stated that, *"lack of particulars unduly prejudiced the appellant in his defence."*

In the matter under scrutiny, it is obvious that the appellant was charged, tried and convicted on non-existent provisions of the law which cannot be said to create any offence. It is clear that the appellant was not made to understand the nature of charge facing him to prepare an informed or rational defence. This resulted into an unfair trial in account of an incurably defective charge sheet. In this regard, the trial was a nullity because it stemmed from a nullity. I hereby nullify the entire proceedings and judgment of the trial court. Further quash the conviction and set aside the sentence meted out against the appellant. Appellant is set at liberty unless lawfully held.



Z. G. Muruke

JUDGE

26/02/2018

Judgment delivered in the presence of Debora Mushi State Attorney for the respondent and appellant both in person.



Z. G. Muruke

JUDGE

26/02/2018