

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

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 335 OF 2017

(Original Criminal Case No. 14 of 2017 in the district court of Kisarawe at
Kisarawe)

ALLY HAMAD BAKARI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

MURUKE, J.

When the matter came for hearing learned state attorney Debora Mushi for the respondent addressed the court that charge sheet is defective. Charge sheet read, Armed Robbery c/s to section 287A of the Penal Cap. 16 R.E. 2002 instead of Armed Robbery contrary to section 287A, as amended by act No. 3 of 2011. Thus defective charge. Defective charge affect the proceedings. Trial was nullity, because the accused did not understand the nature of the offence. Defective charge occasioned miscarriage of Justice as the trial was unfair.

As correctly submitted by Debora Mushi learned state attorney, charge sheet is defective. Charge sheet, is the foundation of the trial. Principal must be that, accused must understand the nature of the offence. The charge sheet, must contain sufficient particulars among them being the right section for the appellant to understand the nature of charges he is facing and what defence to put up. Section 135 of Criminal Procedure Act imposes mandatory requirement that a charge sheet should describe the offence and make reference to the section and law creating the offence. Defective charge render the trial nullity. The defective is not curable. Section 388 (1) cannot cure defective charge. In case of criminal appeal 388 2013 Musa Ramadhani Vs Republic Mugasha, JA.

The charge sheet out to have been framed according to the provision of section 135 (a) (2) of the Criminal procedure act. Accused being found guilty on defective charge based on a wrong and/or nonexistence provision of law, it cannot be said, that the appellant was fairly tried in the court below.

It is the principle of the Law that charge sheet must fulfill following requirements: **“One** the charge drawn and signed by

the trial magistrate is an offence known to law, **Two** it is an offence over which a court has jurisdiction, **Three** must reflect the offence complained.” Principals on the charge was also insisted in the case of **Anania Triauna Vs republic, Criminal Appeal No. 195 of 2009** (Unreported), the court underscored the importance of specifying in the charge sheet the date of occurrence of the offence as follow:

“When specific date of commission of the offence is mentioned in the charge sheet, the defence case is prepared and built on the basis of that specific date”.

It must be underscored that the complaint is which lays the foundation of a formal charge. Subsequently, the entire evidence paraded by the prosecution must in its totality must point to the guilt of the accused person beyond reasonable doubt. Where the evidence is not in support of the charge that clouds the prosecution case with a doubts and the benefit must be given to the accused person.

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. In the absence of the sufficient particulars constituting the offence of Armed Robbery, it is clear that the appellant was not made to understand the nature of charge facing them 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.

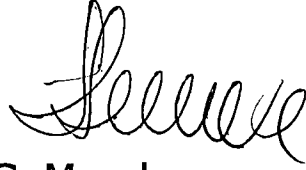


Z. G. Muruke

JUDGE

26/02/2018

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

A handwritten signature in black ink, appearing to read 'Z. G. Muruke', written in a cursive style.

Z. G. Muruke

JUDGE

26/02/2018