

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

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 72 OF 2017

(Originating from the District Court of Kibiti Criminal Case No. 150/2016)

SEIF SALEHE MWENYEMSORE.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

MURUKE, J.

The appellant Seif Salehe Mwenyemsore was convicted and sentenced to serve thirty years (30) imprisonment for the offence of Armed Robbery contrary to **section 287A of the Penal Code, Cap. 16, R.E. 2002**. Being aggrieved by the decision of the district court, appealed to this court advancing seven grounds as listed in the petition of appeal.

Having gone through the pleadings, trial was a nullity. The charge sheet was defective having used wrong section, i.e. section 287A of the Penal code Cap 16 R.E. 2002. Instead of section 287A of the Penal Code as amended by Misc. Criminal Act, act number 3

of 2011. Charge Sheet is the foundation of Criminal to institution of Criminal proceedings against an accused trial.

There are numbers of conditions that must be observed in drafting of charge sheet. 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.” These conditions are intended to make the accused understand the nature of the offence alleged, to have been committed by him so as to prepare his defence. In the instant case, accused did not understand the nature of offence that, was alleged to have been committed by him to make his defence. The presence of defective charge sheet render the whole proceedings nullity, and sentence unproper. Criminal procedure Act, Cap 20. R.E. 2002., Under section 135, (b) (ii) provides that:

“It is necessary for charge sheet to show the offence and the law that the accused is charged with”.

In the whole of section 135 Cap. 20, shows the mode in which offences are to be charged. In the case at hand the mode of charging offence was not absence. As correctly submitted by

learned State Attorney that, Charge sheet must comply with **Section 135(a)(ii) of the Criminal Procedure Act** (supra) which read as follows;

(a)(i) N/A

(ii) the statement of offence shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence and, if the offence charged is one created by enactment, shall contain a reference to the section of the enactment creating the offence;

In the case of **Juma Mohamed vs. Republic, Criminal Appeal No. 272 of 2011**, Court of Appeal (Arusha)(unreported) it was held that and I quote;

"that a statement of offence should describe the offence and should contain a reference to the section of the enactment creating the offence."

Also in the case of **Adam Rajabu vs. Republic, Criminal Appeal No. 369 of 2014**, Court of Appeal (Dodoma)(unreported) referring **the case of Isidori Patrice v. R, Criminal Appeal No. 224 of 2007** held that;

"There is no gainsaying that procedure requires that the particulars of the charge sheet disclose the essential elements or ingredients of the offence that an accused is accused of having committed."

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.

Therefore, failure to cite the full citation of the law brings confusion of the law in which the charge is based renders the charge sheet horrible defective to the extent that it cannot even be cured by **section 388 (1) of the Criminal Procedure Act(supra)**

It is for the foregoing reasons, I quashed the conviction set aside the sentence and order the release of the appellant from prison.

It is so ordered.



Z. G. Muruke

JUDGE

09/04/2018

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



Z. G. Muruke

JUDGE

09/4/2018