

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CRIMINAL APPEAL NO. 154 OF 2017

SULTAN OMARY KIPENZI & 6 OTHERS.....APPELLANTS

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

MURUKE, J.

When the matter came for hearing court *suo moto* raised an issue of law that charge sheet instituted at the trial court was defective. Learned State Attorney Sabrina Joshi for the respondent conceded to the defect and submitted that, charge sheet is defective as it was not addressing the court rather to the Tanzania Police Force which is not the authority to determine the case. The charge sheet instituted or filed in court must bear the name of the respective court.

Among other thing the purposes of charge sheet as stated in the book of **B.D. Chipeta, Magistrate Manual, (3ed), 2007** at page 9 is to give jurisdiction to the court as quoted hereunder;

"Besides, the charge enables the court to know whether or not it has jurisdiction to inquire into or try the and further enable the court to the proceedings by confining

the evidence and arguments to what is alleged in the charge and what is disputed.”

In the case at hand, the charge sheet read that **“TANZANIA POLICE FORCE AT MKURANGA”** instead of **“IN THE DISTRICT COURT OF MKURANGA AT MKURANGA”**. One of the rationale of titling the charge is to consider where it has to be lodged to signify the jurisdiction of the said institution. **Duru Onyekachi** on his article, **Institution of Criminal Proceedings, Charges and Arraignment, in *Free Law Lecture Series: No. 23, 2014*** at page 7 stated that;

“The heading must show the court where the trial will take place, the State, the Judicial Division (in the case of a High Court) or Magisterial District (in the case of a Magistrates Court) where the charge is being filed. Heading determines jurisdiction”

Charge sheet, is the foundation of the trial. 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.” Defective charge render the trial nullity. The

defective is not curable. Section 388 (1) cannot cure defective charge.

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.

I hereby nullify the entire proceedings, quash the conviction and set aside the sentence meted out against the appellants. Appellant are set at liberty unless lawfully held.

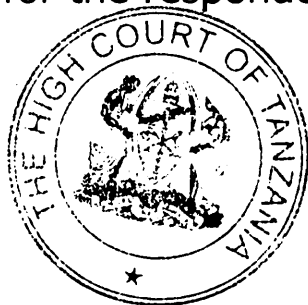



Z. G. Muruke

JUDGE

30/04/2018

Judgment delivered in the presence of Sada Mohamed, State Attorney for the respondent and appellants in persons.




Z. G. Muruke

JUDGE

30/04/2018