

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SONGEA
AT SONGEA

DC. CRIMINAL APPEAL NO.45 OF 2019

**(Originating from Tunduru District Court in Economic
case No. 01 of 2018)**

1. SELEMANI KASDA MAUNGA 1ST APPELLANT

2. ISAYA KINYWAFU MGAO.....2ND APPEALANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of Last Order: 04/03/2020

Date of Judgment: 18/05/2020

BEFORE: S.C. MOSHI, J.

In the District Court of Tunduru at Tunduru the appellants were charged with and convicted of unlawful possession of Government trophy contrary to sections 86(1) and (2) (c) (iii) of the Wild Life Conservation Act, No. 5 of 2009 as amended by Act no.2 of 2016 read together with section 57 (1) of the

Economic and Organised Crimes Control Act, Cap 200 R.E 2002 and paragraph 14 of the first schedule of the Economic and Organized Crimes Control Act, Cap 200 R.E. 2002 as amended by section 16 of the written Laws (Miscellaneous Amendment) Act no 3 of 2016. They were found guilty and sentenced to serve 20 years imprisonment. Aggrieved, the appellants filed a petition of appeal containing six grounds of appeal as follows: -

- 1. That, the trial Magistrate erred in law in convicting the appellants under a fatally defective charge.*
- 2. That, the prosecution case was not proved beyond reasonable doubt.*
- 3. That the trial Magistrate erred in law in convicting the appellants relying on uncorroborated extra-judicial statements.*
- 4. That, the trial Magistrate erred in law by delivering the judgement which lacks the essential ingredients of the judgement.*

At the hearing of the appeal the appellants were represented by Mr. Aggrey Ajetu learned counsel whereas the respondent (the Republic) was represented by Mr. Emmanuel Barigila state attorney. The first ground of appeal was abandoned therefore only three grounds were argued.

I have considered the submissions as presented by appellant's advocate as well as the state attorney. I have decided to consider the 4th ground of appeal as by itself it suffices to dispose of the matter. The 4th ground of appeal reads thus:-

1. That, the trial Magistrate erred in law by delivering the judgement which lacks the essential ingredients of the judgement.

Appellants advocate contended that the judgement lacked essential ingredients, he referred to section 312 (1) of the Criminal Procedure Act, Cap. 20 which require the judgement to contain the issues, points of determination, decision on the issues and the reasons for the decision. It was his further submission that the judgement doesn't contain issues, decision on the issues and the reasons thereof. He buttressed this point with the case of **SHABAN AMIR V R** , Criminal Appeal NO. 18/2007, Court of Appeal at page 5 (Unreported). Mr. Emmanuel supported the argument, he was of a similar view and he added that if section 312(1) of the Criminal Procedure Act is violated it means that there is no judgement by the trial court; if there is no judgement, then the appeal is improperly before the court, the remedy is to quash the judgement and return it to the trial court. He contended that the case of

SHABAN AMIR (supra) is not clear regarding its order of rehearing. He proposed that the trial court be ordered to compose a proper judgement.

I readily agree with the arguments. Non compliance with section 312 (1) of the criminal Procedure Act when composing a judgement, the so written judgment is no judgment at all in the eyes of the law. I need not repeat the arguments but it is evident that the judgement which was delivered by the trial court on 23/09/2019 lacks essential elements to wit; issues, points of determination, decision on the issues and the reasons for the decision.

Having discussed as I did, I quash the judgement and order that a judgment should be written afresh in accordance with the law by another magistrate with competent jurisdiction.

Mean while the appellants are to remain in prison custody.



Right of appeal explained.

S.C. MOSHI

JUDGE

27/04/2020.