

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MBEYA)

AT MBEYA

CRIMINAL APPEAL NO. 117 OF 2019

*(Appeal from the judgment of the Resident Magistrates' Court of Mbeya
at Mbeya, Z. D. Laizer, RM in Criminal Case No. 133 of 2017)*

BENARD S/O LAMECK.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Hearing: 28/04/2020

Date of Ruling : 04/05/2020

MONGELLA, J.

In the resident magistrates' court for Mbeya the applicant was charged and convicted of grave sexual abuse contrary to section 138 (1) (a) and (2) (b) of the Penal Code, Cap 16 R.E. 2002. Consequently, he was sentenced to twenty years imprisonment. Before the hearing of the appeal could proceed, Mr. Davis Msanga, learned State Attorney representing the respondent raised two legal issues to the effect that the judgment is incomplete as it does not include the sentence and that the

sentence does not show the law under which it was passed. Thus this is a ruling on these legal issues.

Mr. Msanga argued shortly that upon perusing the record he noted that the accused was properly convicted on 15th November 2017, but the sentence is not provided in the judgment. He argued that the sentence appears in the proceedings something which is not right because proceedings are supposed to indicate the proceedings of the case only and not the judgment. On the second issue he argued that in sentence provided in the pleadings, the trial Magistrate only wrote that "*the accused is sentenced to serve twenty years imprisonment.*" In his view, this is incorrect as the sentence is supposed to show the offence and the law under which the sentence is passed. Considering these defects he prayed for the case file to be remitted back to the trial court for the sentence to be properly passed and to be included in the judgment.

The law as provided under **section 312 of the Criminal Procedure Act, Cap 20 R.E. 2002**, clearly provides on the contents of a judgment. Section 312 (1) requires a judgment, among other things, to contain the decision of the court. It specifically states:

"Every judgment under the provisions of section 311 shall, except as otherwise expressly provided by this Act, be written by or reduced to writing under the personal direction and superintendence of the presiding judge or magistrate in the language of the court and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding officer as of the date on which it is pronounced in open court.

In my considered view, the term decision under subsection (1) includes the conviction and sentence. Subsection (2) specifically requires the sentence to be included in the judgment. It states that:


*"In the case of conviction the judgment shall specify the offence of which, and **the section of the Penal Code or other law under which, the accused person is convicted and the punishment to which he is sentenced.**"*

Considering the observations I have made above, I agree with Mr. Msanga that by not including the sentence in the judgment the same becomes incomplete and thus defective. Under the circumstances, I can say that there is no valid judgment before this Court for it to entertain on appeal. I therefore struck out the appeal and order for the case file to be remitted to the trial Court for a proper judgement to be composed. I as well hereby instruct the trial Court the following:

1. The trial court should compose a legally acceptable judgement by including a proper sentence on the offence charged basing on the same evidence adduced in court during trial. The judgement should comply with section 312(1) & (2) of the Criminal Procedure Act, Cap 20 R.E. 2002;
2. The Appellant shall remain in custody and should be returned to the trial court for proper sentence to be invoked by the trial magistrate or another magistrate in case the trial magistrate is no longer at the trial court; and upon compliance with the above instructions, the Appellant may wish to lodge his appeal afresh in accordance with the law.

3. The time to appeal shall commence from the date when a proper judgement of the trial court is pronounced to the accused person/Appellant;
4. For the interest of justice, the date of sentence of the accused shall remain the same date as he was put under confinement on the first time;
5. The new judgement shall be completed within thirty (30) days from the date of this Ruling.

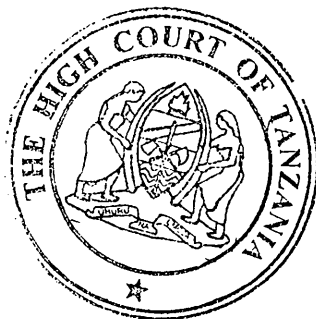
Order accordingly.


L.M. MONGELLA
JUDGE
04/05/2020

Dated at Mbeya on this 04th day of May 2020


L.M. MONGELLA
JUDGE

Court: Ruling delivered at Mbeya in Chambers on this 04th day of May 2020 in the presence of the appellant appearing in person, and Mr. Hebel Kihaka, learned State Attorney for the respondent.




L. M. MONGELLA
JUDGE