

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CRIMINAL REVISION NO. 9 OF 2019

(Originating from Karatu District Court, Criminal Appeal No. 6 of 2019 which originated  
from Karatu Primary Court in Criminal Case No. 31 of 2017)

VERONICA ALEXANDER ..... APPLICANT

Versus

VITALIS GOBRE ..... RESPONDENT

### **RULING**

#### **ROBERT, J:-**

The Applicant, Veronica Alexander, seeks revision of the proceedings and Judgment of the District Court for Karatu at Karatu in Criminal Appeal No. 6 of 2019 and the Proceedings and Judgment of Primary Court in Criminal Case No. 301 of 2017 for alleged errors material to the merits of the case. The application is brought under section 31(1) of the Magistrates' Courts Act, (Cap.11 R.E. 2002).

The application is supported by an affidavit sworn by the Applicant, Veronica Alexander and resisted by the counter affidavit sworn by the Respondent, Vitalis Gobre.

This matter has been in and out of this court before. In order to appreciate fully the details behind this application, it is pertinent to give the necessary background which led to this application.

The Applicant, Veronica Alexander filed a charge of destruction of property contrary to section 326 (1) of the Penal Code, Cap. 16 R.E. 2002 against the Respondent Vitalis Gobre and another person known by the name of John Haruweru in the Primary Court of Karatu at Karatu. The Respondent was convicted and sentenced to pay a fine at a tune of Tanzanian Shillings Fifty Thousand (Tsh.50,000/=) or imprisonment for a term of six months. The two accused persons were also ordered to pay compensation to the Applicant at a tune of Tsh. 2,160,000/=.

Dissatisfied with the decision of the Primary Court, the Respondent appealed to the District Court in Criminal Appeal No. 20 of 2017. The District Court upheld the conviction of the primary court but reduced an order for compensation to Tshs 1,080,000/=. Still dissatisfied, the Respondent

appealed to the High Court vide PC Criminal Appeal No.24 of 2017. The High Court (Maghimbi, J) nullified the Judgment of the trial court for failure of the trial court to record assessors' opinion and remitted the file back to the trial court to comply with the law.

In complying with the orders of this court, records indicate that on 23/1/2019 the trial primary court ordered assessors to give their respective opinions as ordered by the High Court in PC Criminal Appeal No.24 of 2017. Two assessors recorded their opinions on the matter then the trial court proceeded to convict and sentence the Respondent.

Dissatisfied with the decision of the trial court, the Respondent appealed to the District Court of Karatu vide Criminal Appeal No. 6 of 2019. The District Court found that the prosecution case was not proved beyond reasonable doubt. The District Court allowed the appeal and quashed the entire proceedings and set aside the sentence and compensation order.

Aggrieved with the decision of the District Court, the Applicant filed this application praying for this court to call for, revise and inspect the record of proceedings and judgment of the District Court for Karatu in Criminal Appeal No. 6 of 2019 and proceedings and Judgment of primary court in criminal

case No. 301 of 2017 in order to give direction in respect of errors material to the merits of the case.

When the application came up for hearing on 19<sup>th</sup> March, 2020 both parties appeared in person unrepresented. Parties prayed successfully for the application to be argued by way of written submissions.

Submitting on the reasons for the revision, the Applicant submitted that the trial court failed to recompose a new judgment after nullification of its first Judgment by the High Court in Criminal Appeal No. 24 of 2017 for lack of opinion of assessors. She clarified that in complying with the orders of the High Court, the trial magistrate simply recorded the assessors' opinion and proceeded to sentence the Respondent without composing a judgment of the court pursuant to Paragraph 37(2) of the Primary Court Criminal Procedure Code (3<sup>rd</sup> Schedule to the Magistrates Courts Act, Cap. 11 R.E. 2002). She argued that since the first judgment of primary court was already nullified, it follows that there was no judgment of the primary court in respect of Criminal case no. 301 of 2017. She observed that due to the irregularities in the decision of the primary court, the Respondent should have filed for revision of the trial court decision instead of filing an appeal to the District court.

Submitting further on the reasons for revision, the Applicant faulted the Hon Magistrate in Criminal Appeal No. 6 of 2019 for deciding on the defence of alibi which was not properly raised in the proceedings of this case. She submitted further that the defence of alibi was raised by the second accused person when the prosecution case was already closed hence there was no chance for the prosecution side to challenge it.

Responding against the application, the Respondent argued that the Applicant submitted no good ground for revision and prayed for the application to be dismissed and the decision of the District Court of Karatu dated 16<sup>th</sup> July, 2019 be left undisturbed.

Replying on the grounds for revision, the Respondent made reference to paragraph 7 of his counter affidavit where he stated firstly, that irrespective of the orders of the primary court, after the High Court decision in PC Criminal Appeal No. 24 of 2017, the District Court properly looked into the proceedings of the trial court and found that the case against the Respondent was not proved as required by the law and finally acquitted the Respondent. Secondly, the District Court looked into the merit of the case (evidence in record) in giving its decision and clearly complied with the principle that justice should be done without being tied to technicalities.

Thirdly, there is no any injustice occasioned to any party in this application by either the trial court or the District Court. He invited the court to consider justice without relying on legal technicalities, look into the merit of the case at the trial court and find that both lower courts decisions occasioned no injustice to either party.

He submitted further that the other grounds for revision raised by the Applicant were not part of the Applicant's affidavit and therefore should not be entertained in this application. He argued that what seems to be relevant to be brought by way of Revision is the argument that the trial court did not recompose judgment as ordered by this court (Hon. Maghimbi, J) in PC Criminal Appeal No. 24 of 2017. However, he submitted that the District Court was correct to look into the merit of the case and make its decision.

In rejoinder, the Applicant reiterated the reasons in support of her application, she submitted that her prayers for revision were due to established irregularities that the trial magistrate wrote the assessors opinion only without composing a complete Judgment as required by the law. She maintained that since the primary court judgment was nullified it means there was no judgment at all and therefore the trial court needed to recompose a new judgment.

Having considered the submissions of both parties and reviewed the records in this application, I should pose here and make a determination on whether there is merit to this application.

It is not disputed that the High court (Maghimbi, J) having nullified the trial court's decision for lack of assessors' opinion and remitted the case file to the trial court for compliance with law, the trial court proceeded to record the opinion of assessors and pronounced its sentence without composing a new judgment. The question for determination, therefore, is whether or not that omission was fatal, and whether it affected the subsequent proceedings and Judgment in the District Court before Hon. I.B Kuppa, RM.

The trial court having recorded assessors' opinion in Criminal Case No. 301 Of 2017 as ordered by the High Court was supposed to pass judgment which contains points for decision arrived at by the magistrate and assessors, decision thereon and the reasons for such decision before convicting or acquitting and discharging the accused person.

Since in Criminal Case No. 301 of 2017 the trial court proceeded to convict and sentence the Respondents after recording assessors' opinion without composing Judgment, given that its judgment was already nullified by the

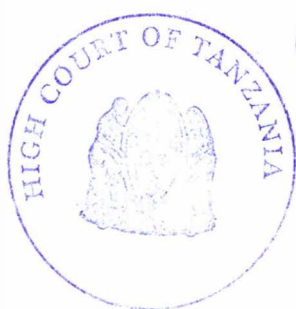
High court, this court finds that there was no judgment in Criminal case No. 301 of 2017 in terms of Paragraph 37(2) of the Primary Courts Criminal Procedure Code (3<sup>rd</sup> Schedule to the Magistrates' Courts Act, Cap. 11 R.E. 2002). The omission of the trial court to compose judgment in Criminal Case No. 301 of 2017 after nullification of its first judgment by the High court is a basic and fundamental irregularity which renders its conviction and sentence defective and unsustainable.

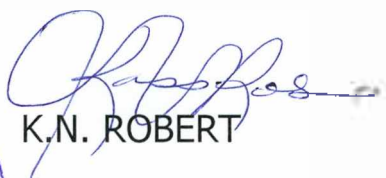
Unfortunately, the District court did not consider this omission when dealing with Criminal Appeal No. 6 of 2019 and proceeded to determine the appeal filed by the Respondent herein. In effect this renders the decision of the District court in Criminal Appeal No. 6 of 2019 equally defective as it stemmed from a nullity.

Considering the facts and circumstances of this case in the light of principles on whether or not to order a retrial as provided in the case of **Fatehali Manji v. Republic (1966) EA 343**, I find that the interest of justice demand for a retrial of this case. Consequently, I allow this application, nullify the proceedings and judgment of the District Court of Karatu in Criminal Appeal No. 6 of 2019 and the proceedings of Karatu Primary Court in Criminal Case No. 301 of 2017. I further quash and set aside



the conviction and sentence of Karatu primary court in Criminal Case No. 301 of 2017. As a consequence, I remit the record to the trial court for retrial before another Magistrate and a new set of assessors. Given the circumstances of this case I direct that the retrial should be fast-tracked and disposed of expeditiously.



  
K.N. ROBERT

JUDGE

14/8/2020