

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MBEYA)

AT MBEYA

CRIMINAL APPEAL NO. 116 OF 2020

*(Appeal from the judgment of the District Court of Chunya at Chunya,  
Hon. O. N. Ngatunga RM in Economic Criminal Case No. 03 of 2015)*

**ABELI S/O KRISTOFA.....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

*Date of Hearing: 29/09/2020*

*Date of Ruling : 06/10/2020*

**MONGELLA, J.**

In the District court of Chunya, the appellant was arraigned and convicted on two counts being: first, unlawful possession of Government trophies contrary to section 86 (1) (2) (c) (ii) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 (d) of the first Schedule, section 57 (1) and 60 (2) of the Economic and Organised Crimes Control Act, Cap 200 R.E. 2002. The second count was unlawful possession of firearms contrary to section 4 and 34 (2) of the Arms and Ammunition Act, Cap 223 R.E. 2002 as amended by the Written Laws



(Miscellaneous Amendments) Act No. 17 of 2010. On the first count he was sentenced to serve 20 years imprisonment and to pay a fine amounting to T.shs. 2,400,000/-. On the second count he was sentenced to pay fine of T.shs. 300,000/- or in default to serve 5 years imprisonment.

Aggrieved by this decision he appealed to this Court on nine grounds. However, before the hearing of the appeal could proceed Mr. Shindai Michael, learned State Attorney for the respondent, raised a point of law to the effect that the conviction was not properly entered by the trial court.

Mr. Shindai submitted that the appellant was not convicted in accordance with the law whereby the requirements of section 312 (2) of the Criminal Procedure Act, Cap 20 R.E. 2019 were not adhered to. He referred to page 7 of the trial court judgment and argued that the trial court purportedly entered the conviction without stating the offence and the provision establishing the offence as required under the law. Referring to the case of ***Kelvin Myovela vs. The Republic, Criminal Appeal no. 603 of 2015***, he prayed for the case file to be remitted back to the trial court for a proper conviction to be entered.

On his part, the appellant had nothing much to argue. He only said that he has already spent 5 years in jail and should not be punished for a mistake occasioned by the trial Magistrate. He prayed for the court to proceed entertaining his appeal.

Under **Section 312(2) of the Criminal Procedure Act, Cap 20 R.E. 2002**, the conviction entered by the court is required to include the offence in which the accused is convicted with and the specific provision of the law

in which the offence convicted upon is provided. The Section specifically provides:

*"In case of a 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 conviction entered by the trial magistrate in the case at hand, I agree with Mr. Shindai that it has not adhered to the requirements of the law as provided under section 312(2) cited above and therefore improper. This position has also been set in a number of cases by the CAT. In the case of ***Kelvin Myovela vs. The Republic*** (supra), for example, the CAT, at page 5 stated:

*"It is not sufficient to find an accused guilty as charged. Failure to enter a conviction renders a judgement invalid. In fact, there is no valid judgement without a conviction having been entered, as it is one of the prerequisites of a valid judgement."*

At page 7 the CAT also stated:

*"Since in the instant case, the trial court did not enter a conviction, the judgement and the subsequent sentence were a nullity. Since they were a nullity there was nothing which the High Court could have upheld."*



Apart from the decision of **Kelvin Myovela** (supra), there a number of other decisions from the Court of Appeal which have stressed on this point. These include: **Aman Fungabikasi vs. Republic, Criminal Appeal no. 270 of 2008; Shabani Iddi Jololo and three others vs. Republic, Criminal Appeal no. 200 of 2006; and Hassan Mwambanga vs. Republic, Criminal Appeal no. 410 of 2013** (all unreported). In all these cases the Court stated that the failure of the trial court to enter a conviction is a fatal and incurable irregularity. It renders the purported judgment and imposed sentence a nullity and thus the same cannot be upheld by the High Court in the exercise of its appellate jurisdiction. (See also, **George Patrick Mawe & 4 others vs. Republic, Criminal Appeal no. 203 of 2011 and John s/o Charles vs. Republic, Criminal Appeal no. 190 of 2011**(unreported)).

Following such defect in the trial judgement, the only remedy available is to remit the case file to the trial court for it to enter a conviction in accordance with the law before passing a sentence. (See, **Kelvin Myovela** (supra) at page 7). I therefore hereby 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 conviction based on the same evidence adduced in court during trial. The judgement should comply with sections 235(1) and 312(2) of the Criminal Procedure Act, Cap 20 R.E. 2002;



2. The trial court file should be returned to the trial court to comply with the above instructions;
3. The appellant shall remain in custody and should be returned to the trial court for proper conviction 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;
4. The time to appeal shall commence from the date when a proper judgement of the trial court is pronounced to the accused person/appellant;
5. 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;
6. The new judgement shall be completed within thirty (30) days from the date of this ruling.

Order accordingly.

  
**L.M. MONGELLA**  
**JUDGE**  
**07/10/2020**


Dated at Mbeya this 07<sup>th</sup> day of October 2020

  
**L.M. MONGELLA**  
**JUDGE**

**Court:** Ruling delivered at Mbeya through Virtual Court on this 07<sup>th</sup> day of October 2020 in the presence of the Appellant, appearing in person, and Ms. Zena James, learned State Attorney for the Respondent.

  
**L. M. MONGELLA**  
**JUDGE**

Right of Appeal to the Court of Appeal has been explained.

  
**L. M. MONGELLA**  
**JUDGE**  
**07/10/2020**

