

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA.**

(PC) CRIMINAL APPEAL NO. 20 OF 2020

*(Originating from Karatu District Court in Criminal Revision No. 3 of 2020, arising
from Karatu Primary Court in Criminal Case No. 214 of 2020)*

ISRAEL JOHN 1ST APPELLANT
FELISI AWEDA 2ND APPELLANT
FABIOLA JOSEPH 3RD APPELLANT
AGNESS WILYAM 4TH APPELLANT
KASTULI JOSEPH 5TH APPELLANT
JOHN ISRAEL 6TH APPELLANT

Versus

DAUDI JOHN RESPONDENT

JUDGMENT

10th December, 2020 & 5th March, 2021

Masara, J.

The Respondent herein is the complainant at Karatu Primary Court (the trial Court) in Criminal Case No. 214 of 2020. The Appellants were arraigned at the said trial Court charged with the offence of Brawling, contrary to section 89(1)(b) of the Penal Code, Cap. 16 [R.E 2019]. On 26/3/2020, the charge sheet was read to the Appellants and all of them pleaded not guilty to the charge. The Appellants were all admitted to bail whereby the case was scheduled for hearing on 2/4/2020. Before hearing of the case commenced, the Appellants made an application to the District Court of Karatu (the District Court) under section 22(1) of the Magistrate Courts' Act, moving it to call and examine the record of the trial Court in order to satisfy itself as to the correctness and the same be revised and

an appropriate order made for the ends of justice. The District Court revised the record of the trial Court and on 3/6/2020 dismissed the Revision Application reasoning that the application was taken at a premature stage> The District Court therefore ordered Criminal Case No. 214 of 2020 to proceed on its merits before the trial Court. The Appellants were dissatisfied by that decision, they have preferred this appeal on four grounds as reproduced hereunder:

- a) That, the Honorable Resident Magistrate erred in law and in fact in failing to address his mind towards the section of the law under which the Appellants were charged;*
- b) That, the Honorable Resident Magistrate erred in law and in fact in failing to comprehend that the offence of affray as it is couldn't have been levelled against the Appellants save that both parties were liable to face the consequences;*
- c) That, the decision of the District Court is null and void for violation of the mandatory provisions of section 13(2) of the Magistrates Courts' Act, Cap 11 [R.E 2019]; and*
- d) That, the decision of the District Court has caused miscarriage of justice in the circumstances.*

At the hearing of the appeal, both parties appeared in court in person unrepresented. The appeal was disposed through filing written submissions. It is noted that the Respondent's reply submissions were drafted by Mr. Patrick G. M. Maligana, learned advocate.

The Appellants submitted on all the four grounds of appeal jointly. The Appellants contended that their major complaint was whether the trial Court had jurisdiction to entertain the matter basing on the provision under which the Appellants were charged and whether the District Court exercised its powers properly in dismissing the Application without making a fair interpretation of the word "affray". They maintained that they were

charged with the offence of affray which as portrayed has a wide scope which needed a clean mind in law. They added that the grounds of appeal are well placed before this Court for the ends of justice as the District Court did not go into the root of the matter. Basing on their submission, the Appellants pray that the appeal be allowed.

Contesting the appeal, the Respondent averred that the file in Criminal Case No. 214 of 2020 which the Appellants sought revision consisted of only the Charge sheet and that the only order by the trial Magistrate thus far was that of granting bail to the Appellants. He concluded that there were no proceedings or decision worth revising. He added that the Appellants were charged under section 89(1)(b) of the Penal Code and not section 87 as claimed by the Appellants. Further, that ground fails since the Appellants did not attach the charge sheet which shows that they were charged with affray as alleged. On the complaint that the decision of the District Court violated the mandatory provision of section 13(2) of the MCA, he stated that there was no any error committed in terms of the provision cited because the language of the Court in District Court is either English or Kiswahili but judgment must be in English. Regarding the allegation that the decision of the District Court has caused miscarriage of justice, it was the Respondent's submission that such allegation is unfounded since the District Court perused the trial court record and satisfied itself that there were no irregularities whereby it ruled that the application for revision was made prematurely. He implored the Court to dismiss the appeal for want of merits and order Criminal Case No. 214 of 2020 be heard on merits by the trial Court.

I have carefully considered the grounds of appeal as well as the submissions made by the parties. I have also gone through the record of the lower Courts. I am settled in my mind that the issue for determination is whether the appeal before this Court has any merits.

The main complaint posed by the Appellants regarding this appeal and according to what they have argued in respect of this appeal is the complaint that they were charged with the offence of Affray contrary to section 87 of the Penal Code, Cap 16 [R.E 2019]. This was strongly contested by the Respondent stating that the Appellants were charged with the offence of Brawling, contrary to section 89(1)(b) of the Penal Code. From the trial Court record, it is apparent that the Appellants were charged with the offence of Brawling, contrary to section 89(1)(b) of the Penal Code, Cap 16 [R.E 2019]. The offence on the charge sheet reads:

"KOSA NA KIFUNGU CHA SHERIA: KUFANYA FUJO K/F 89(1)(b) SURA 16 K/A"

It is therefore not true, as contended by the Appellants, that they were charged with the offence of Affray, contrary to section 87 of the Penal Code. That contention is misconceived and unfounded. The said charge sheet shows that it was signed on 26/3/2020 when the Appellants were arraigned in the trial Court for the first time. This shows that there is nothing to doubt on the said charge. In the ruling of the District Court, the learned Magistrate stated that the Appellants were charged with the offence of Brawling, contrary to section 89(1)(b) of the Penal Code. That should have alerted the Appellants, but they went ahead and challenged the holding of the District Court as well. It is not clear as to where the


allegations that they were charged under section 87 came from. I do not therefore find merits in this ground of appeal.

Regarding the issue of language of the Court as complained by the Appellants, it is not clear as to what exactly the Appellants intended to address as they did not substantiate the same in their joint submissions. It is not clear how section 13(2) of the MCA was violated and how they were affected by it. The provision is clear in terms of the language of the Court, and the decision of the District Court was in compliance with that provision.

The last ground of appeal also lacks merits. The decision of the District Court was justified on the basis of what was presented to it. I find no reasons to fault it. The learned District Court Magistrate was correct to hold that the application was preferred prematurely. There was no record upon which the District Court could have invoked its revisional powers under section 22(1) of the MCA since the file was only composed of the charge and the bail record.

Consequently, the appeal lacks merits. It is dismissed in its entirety. The file is remitted back to the trial Court so that Criminal Case No. 214 of 2020 can be expeditiously heard on merits.

Order accordingly.


B. Masara
JUDGE
5th March, 2021

