

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(DISTRICT REGISTRY OF MTWARA)**

**AT MTWARA**

**CRIMINAL REVISION NO. 1 OF 2021**

*(Originating from Masasi District Court in Criminal Case No. 11 of 2021)*

**THE REPUBLIC ..... APPLICANT**

**VERSUS**

**PAUL LAMECK MWANDELILE.....RESPONDENT**

**RULING**

*Hearing date on: 23/4/2021*

*Ruling date on: 27/4/2021*

**NGWEMBE, J:**

This ruling is born out of the application for revision made by the Republic through a letter dated 14<sup>th</sup> April, 2021 bearing the title of "*Maombi ya Kufanyiwa Marejeo katika kesi ya jinai namba 11 ya 2021 Jamhuri dhidi ya Paul Lameck Mwandelile katika Mahakama ya Masasi*". The contents of the letter was to the effect that, the trial magistrate rightly convicted the respondent for his unequivocal plea of guilty on the offence preferred against him. Upon being convicted, the trial court proceeded to pronounce



sentence of fine to the tune of one million shillings, contrary to section 24 of the Act. Thus, Mr. Paul Kimweri learned senior state Attorney, informed this court and invited this court to exercise its revisional jurisdiction under sections 372 and 373 (1) (4) of Criminal Procedure Act, to call upon the trial court's records and revise the sentence according to law.

Briefly the genesis of this application is born out of the respondent's business of selling plants fertilizer and other chemicals as manager of Danken Crops Science Co. Ltd, based in Dar es Salaam, but having a Godown in Masasi District. In the cause of inspection by relevant authorities, in one of the Go downs at Masasi District, was revealed that the labels in some of the chemicals used for tomatoes, were labeled for Cashewnuts, while knowing that same is false and total misdirection to consumers. In turn the manager of that go down (Respondent) was arrested and arraigned in court, charged accordingly under the Plants Protection Act No. 13 of 1997.

When the respondent appeared in court, he pleaded guilty, consequently was convicted and sentenced as stated above, thus this revision.

Since the revision is intended to affect the trial court's sentence, I found proper to invite both parties to appear in court and address the court accordingly. The learned State Attorney Caroline Matemu appeared for the Republic while the respondent appeared in person. The State Attorney, repeated what is summarized above and rested by a prayer that this court be pleased to invoke sections 372 and 373 (1) (4) of the Criminal



Procedure Act Cap 20 R.E. 2019 to revise the sentence passed by the trial court.

In turn the respondent demonstrated good cooperation to the court by stating that he complied with the trial court's order by paying fine of shillings one million instead of being imprisoned for three years. Rested by submitting that he will be read to comply with this court's order.

The jurisdiction of this court to revise any decision of the subordinate court is statutory as provided for under section 372 and 373 of CPA. The sections are quoted hereunder for better understanding:-

**Section 372-(1)** *"The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any subordinate court"*

(2) *"Notwithstanding the provisions of subsection (1), no application for revision shall lie or be made in respect of any preliminary or interlocutory decision or order of a subordinate court unless such decision or order has the effect of finally determining the criminal charge"*

**373.-(1)** *"In the case of any proceedings in a subordinate court, the record of which has been called for or which has been reported for orders or which otherwise comes to its knowledge, the High Court may-*



*(a) in the case of conviction, exercise any of the powers conferred on it as a court of appeal by sections 366, 368 and 369 and may enhance the sentence; or*

*(b) in the case of any other order other than an order of acquittal, alter or reverse such order, save that for the purposes of this paragraph a special finding under subsection (1) of section 219 of this Act shall be deemed not to be an order of acquittal"*

**(2)** *"No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence; save that an order reversing an order of a magistrate made under section 129 shall be deemed not to have been made to the prejudice of an accused person within the meaning of this subsection"*

**(3)** *"Where the sentence dealt with under this section has been passed by a subordinate court, except if the matter involved a sexual offence, the High Court shall not inflict a greater punishment for the offence, which in the opinion of the High Court the accused has committed, than might have been inflicted by the court which imposed the sentence"*

**(4)** *Nothing in this section shall be deemed to preclude the High Court converting a finding of acquittal into one of conviction where it deems necessary so to do in the interests of justice.*

**(5)** *Not applicable*

These two sections are clear like a brightest day light, that the court has revisional jurisdiction over proceedings, judgement, orders and alike of subordinate courts. Likewise, when the court is of the view that the



sentence passed by the trial court is contrary to law, then this court may reverse it and pass an appropriate sentence. However, before doing so, it is mandatory, under subsection 2 of section 373 to call parties and afford them to be heard. In respect of this court, both parties have been heard, thus, complying with the statutory provision cited above.

Now having laid down those basic principles, the question remains, whether the trial court was properly guided by law when passed sentence of fine to the tune of shillings one million? The section used to charge the respondent is clear, which does not need additional expertise on legal interpretation to understand that a person found guilty under section 24 of the Act is liable to fine not less than ten Million shillings but not exceeding one hundred million shillings. For ease of reference, the section is quoted hereunder:-

Section 24:

*"Any person who, knowingly makes any false statement, issues or maintains any false or misleading declaration, document, marking or description of a plant protection substance in connection with manufacturing, importation or sale of plant protection substance or any substance, capable of being used in the manufacturing substances, shall be guilty of an offence and liable to a fine of not less than **ten million shillings but not exceeding one hundred million shillings** or to imprisonment for a term **not exceeding three years** or to **both such fine and such imprisonment**"*

The section I think; does not require an assistance from intellectual of legal drafting to provide legal interpretation. The section says clearly



like a day followed by night. As such I am reminded by the Court of Appeal of Tanzania in the case of **Republic Vs. Mwesige Geoffrey and Another, Criminal Appeal No. 355 of 2014** (unreported), where they discussed family canon of statutory construction and quoted with approval the decision of the United States of America Supreme Court in **CAMINETTI Vs. United States, 242 US. 470 (1917)** the court categorically ruled that:-

*"It is elementary that the meaning of a statute must in the first instance, be sought in the language which the Act is framed, and if it is plain....the sole function of the courts is to enforce it according to its terms"*

When the words of a statute are unambiguous, judicial inquiry is complete. There is no need for interpolations, lest we stray into exclusive zone of the legislature under the cloak of overzealous interpretation. In the same vein the Court of Appeal of Appeal repeated in the case of **Serengeti Breweries Ltd Vs. Joseph Boniface, Civil Appeal No. 150 of 2015** at page 9 held:-

*"Courts must presume that a legislature says in a statute what it means and means in a statute what it says"*

The quoted section says, the minimum fine is shillings ten million, while the maximum is one hundred million shillings. Such fine need no interpretation than to apply as it is.

In the circumstances of this revision and being guided by subsection 3 of section 373 of CPA to wit: *"Where the sentence dealt with under this*



*section has been passed by a subordinate court, except if the matter involved a sexual offence, the High Court **shall not inflict a greater punishment for the offence, which in the opinion of the High Court the accused has committed, than might have been inflicted by the court which imposed the sentence***"

In totality, the right statutory fine is ten million shillings, the fine of one million shillings ordered by the trial court was contrary to law and same is enhanced into ten million shillings. Since the respondent already complied and executed the trial court's order by paying fine of one million shillings as ordered by the trial court, I think it is only just to order the respondent to pay the remaining balance of nine million shillings to the same trial court within seven (7) days from the date of this ruling (Payment be made on or before 03/5/2021). Failure to comply with that fine, the sentence of three (3) years imprisonment imposed by the trial court shall be complied with immediately.

**I accordingly Order.**

**Ruling is Dated** at Mtwara in chambers this 27<sup>th</sup> day of April, 2021



A handwritten signature in black ink, appearing to be "P.J. Ngwembe", written over a large, loopy initial "P".

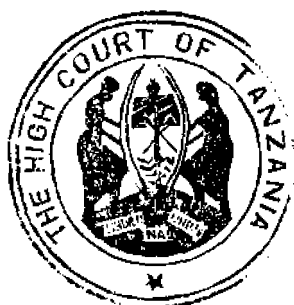
**P.J. NGWEMBE**

**JUDGE**

**27/04/2021**

**Court:** Ruling delivered at Mtwara on this 27<sup>th</sup> day of April, 2021 in the presence of the respondent in person and Ms. Eunice Makala, State Attorney for the applicant.

**Right to appeal to the Court of Appeal explained.**



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**P.J. NGWEMBE**

**JUDGE**

**27/4/2021**