IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CONSOLIDATED CRIMINAL APPEALS NO. 03 & 36 OF 2020

(Arising from judgment of the Resident Magistrate Court of Dar es salaam at Kisutu in Economic Case No. 21 of 2014, before Hon. H. Shaidi, **PRM**, dated 19th day of February, 2019.)

SALVIUS FRANCIS MATEMBO...................................1st APPELLANT

MANASE JULIUS PHILEMON....................................2nd APPELLANT

YANG FENG GLAN...3rd APPELLANT

VERSUS

REPUBLIC.. RESPONDENT

JUDGMENT

19th April, 2021 & 31st May, 2021.

E. E. KAKOLAKI J

The appellants in this matter being aggrieved with the conviction, sentence and confiscation order, handed down on the 19th day of February, 2019 by the Resident Magistrates Court of Dar es salaam at Kisutu in Economic Case No. 21 of 2014, have preferred two appeals challenging the said decision. The two appeals Criminal Appeal No. 03 of 2020 by the 1st and 3rd appellants and No. 36 of 2020 by the 2nd appellant were both preferred after grant of

extension of time to so do by this Court vide its ruling dated 20/12/2019, Kalunde J, in Misc. Criminal Applications No. 206 and 222 of 2019. For the purposes of smooth disposal and consistence of the decision in both appeals, this Court on 03/02/2020 consolidated them and further ordered the proceedings to be conducted in Criminal Appeal No. 03 of 2020 case file. In the decision sought to be assailed appellants were found guilty of the offences charged with and convicted accordingly. The sentence fifteen (15) years imprisonment was meted to the 3rd appellant against the 1st count as well as 1st and 2nd appellants against the 2nd count and two (2) years imprisonment to all appellants against the 3rd count or fine of two times of the value of the trophies. Further to that a confiscation order to the Government of the land (shamba) and buildings, the properties of 3rd appellant located at Maili Saba area within Muheza District, Tanga Region was entered. In their appeals 1st and 3rd appellants have raised six grounds of appeal whereas the 2nd appellant has preferred ten (10) grounds of appeal. The first six (6) grounds of appeal for the 1st and 3rd appellant are going thus:

1. That, the Principal Learned Resident Magistrate, misdirected himself in fact and in law by failing to make finding that the Respondent case was not proved be was not proved beyond reasonable doubt and went on shifting the burden of proof from the Respondent to the Appellants and fail to consider and analyse properly the evidence adduced by the defence.
2. That, the Principal Learned Resident Magistrate, misconceived himself in fact and law, in admitting exhibit P1, P3 and P4 the cautioned

statements of the 1st and 3rd appellants and fail to make a specific finding on whether they were voluntarily made, subsequently relied on them in convicting the Appellants.

3. That, the Principal Learned Resident Magistrate, misconceived himself in fact and law by convicting the 1st and 3rd appellants depending on the evidence of PW7, PW8. PW9 and PW19 which were so unreliable and contradictory and who by their testimonies they were accomplices and had interests of their own to serve in the case.
4. That, the Principal Learned Resident Magistrate, misconceived himself in fact and law, in conviction the 1st and 3rd appellants basing on theoretical evidence in regard of the 860 elephant tasks without the said tusks being physically produced and tendered as exhibit contrary to section 101 of the Wildlife and Conservation Act, No. 5 of 2009.
5. That, the Principal Learned Resident Magistrate, grossly misdirected himself in fact and law in convicting and sentencing the 1st and 3rd appellants contrary to sections 235(1) and 312(2) of the Criminal Procedure Act,[Cap. 20 R.E 2002].
6. That, the Principal Learned Resident Magistrate, grossly misdirected himself in fact and in law in conducting sentencing hearing section 236 of the Criminal Procedure Act,[Cap. 20 R.E 2002] whilst the case for both prosecution and defence has been closed and admit new evidence although the same was strongly objected to by the 1st and 3rd appellants.

As regard to the 2nd appellant the ten (10) grounds of appeal were stated as follows:

1. That, the trial PRM erred in law and fact to convict the appellants based on prosecution evidence that lacked authenticity and transparency as their testimonies were recorded contrary to section 210(3) of CPA, (Cap. 20 R.E 2002).
2. That, the trial PRM erred in law and fact to convict the appellants relying upon not cleared exhibits to wit retracted and or repudiated caution statements of the appellants which were illegally recorded by impartial witness (PW3) and later admitted in evidence unprocedural.
3. That, the trial PRM erred in law and fact to believe oral evidence of PW11 that 2nd and 3rd appellants transacted big amount of money through exhibit P.8 collectively while there is no connection established to prove that those transactions were of illegal dealing in trophies and even the mandate file of 2nd appellant was not tendered to substantiate that he maintained bank A/C at Barclays Bank.
4. That, the trial PRM erred in law and fact to convict the appellants relied upon electronically retrieved exhibit P.8 (collectively) and other documentary exhibits P.6 and P.7 while:-

i. P.8 was unprocedural procured contrary to Electronic Transaction Act of 2005.

ii. Chain of custody of those exhibits was not established and proved also handing of exhibits was not established and proved between PW. 11 and police officers.

5. That, the trial PRM erred in law and fact to convict and sentence the appellants without considering that there is variance between the charge and the evidence of record about the value of the alleged 860

pieces of trophies. Hence the charge was not proved beyond speck of doubts.

6. That, the learned trial PRM erred in law and fact to convict the appellants relied on unreliable oral evidence of PW7, PW8 and PW10 who were accomplices who fully participated regularly in the commission of the alleged offences and really benefited from the deal without warning himself on the danger of their testimonies as they were saving interests by implicating appellants.
7. That, the learned trial PRM erred in law and fact to sentence the appellants without considering that there was no proper conviction known to law as the same was contrary to section 235(1), hence the trial judgment was composed contrary to section 312(2) both provisions of CPA, (CAP. 20 R.E 2002).
8. That, the learned trial PRM erred in law and fact to impose sentence to the appellants without considering sentencing principle, that is the time appellants spent in remand awaiting final determination of their trial (about 5 years) was not reckoned as advised by case precedents.
9. That, the learned trial PRM erred in law and fact to convict the appellants in a case that was poorly investigated and prosecuted as:-
    i. The name of the person/company that used to buy those trophies was not disclosed.
    ii. The name of person/company that used to transport those trophies was not disclosed.
    iii. No plausible explanation as to why the alleged trophies were not recovered to return them to Tanzania.

10. That, the learned trial PRM erred in law and fact to convict the appellants in a prosecution case that was not proved beyond reasonable doubts.

With all those grounds of appeal the appellants humbly prayed this court to allow their appeals by quashing the conviction and set aside the sentence and confiscation order of the trial court, the result of which is to set them free forthwith.

Arraigned before the Resident Magistrates Court of Dar es salaam at Kisutu in Economic Case No. 21 of 2014, at different times between 03/06/2014 and 07/10/2015, appellants were charged with economic offences in four counts. Earlier on appellants were booked with **Unlawful Dealing in Government Trophies**; as first count to all three accused persons, **Leading Organised Crime** as second count for the 3rd appellant and third count to the 1st and 2nd appellants respectively, whereas the fourth count of **Escaping from Lawful Custody** faced the 2nd appellant. The trophies involved in the 1st, 2nd and 3rd counts were 706 pieces of Elephant Tusks, weighing 1889 Kilograms valued at Tanzania Shillings five billion, four hundred thirty five million, eight hundred sixty five thousand (Tshs. 5,435,865,000/=) only.

On the 03/02/2017 the former charges were substituted with the new ones, with material changes in the particulars of offence in both the 1st, 2nd and 3rd counts. In the 1st count the 3rd appellant was accused of **Leading Organised Crime**; Contrary to Paragraph 4(1)(a) of the First Schedule to, and Sections 57(1) and 60(2) of the Economic and Organised Crime Control

Act, [Cap. 200 R.E 2002]. It was alleged by prosecution that the 3rd appellant on diverse dates between 1st of January, 2000 and 22nd May, 2014, within the City and Region of Dar es salaam, intentionally organised, managed and financed a criminal racket by buying, collecting, transporting and selling Government Trophies to wit: 860 elephant tusks, valued at USD 6,450,000/= equivalent to Tanzanian Shillings Thirteen Billion, Nine Hundred Thirty Two Million, [Tshs. 13,932,000,000/=] only, without a permit from the Director of Wildlife.

Like the 3rd appellant, the 1st and 2nd appellants faced a similar offence of **Leading Organised Crime** in the 2nd count, whereby jointly and together were accused on diverse dates between 1st of January, 2000 and 22nd May, 2014, within the city and Region of Dar es salaam, furnished assistance and direction in the conduct of the business of criminal racket by collecting, transporting and selling Government trophies of the similar amount and value as in the first court. As to the 3rd count against all appellants the charge preferred was **Unlawful Dealing in Trophies**; Contrary to Sections 80(1)(2) and 84 of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14(b) of the First Schedule to, and Section 57(1) and 60(2) of the Economic and Organised Crime Control Act, [Cap. 200 R.E 2002]. It was prosecution's case on this count that, on the same dates and place to that of 1st and 2nd counts, the appellants jointly and together, carried on business of Government trophies by buying, accepting, selling and transporting trophies of similar amount and value as described in the 1st count, without Dealer's Licence. The fourth and last count was for the 2nd appellant for **Escaping From Lawful Custody**; Contrary to sections 116

and 35 of the Penal Code;[Cap. 16 R.E 2002], whereon it was alleged on the 21/05/2014 at Sinza Palestina Hospital within Kinondoni District in Dar es salaam Region, escaped from the lawful custody of a police officer namely D. 7847 D/SGT Beatus, who was at the material time holding him under custody on allegations of Unlawful Dealing in Government trophies and Leading Organised Crime.

When the appellants were called on to answer their charges, they all denied them, the result of which forced the prosecution to parade eleven (11) witness and tendered in court different documentary exhibits as well as physical exhibit, a plot of land (shamba) and two houses, in its attempt to prove its case which exhibits were assigned prosecution exhibits number 1 to 8. In addition one exhibit was tendered and admitted during the sentencing hearing as exhibit P1. On the defence side all there appellants testified on their own as sole defence witnesses and tendered no exhibits. At the end of the trial the trial court found the prosecution had proved its case beyond reasonable doubt, thus found all three appellants guilty of the offences charged with and convicted them in its judgment handed down on the 19/02/20219, and before they were sentenced accordingly after conducting sentencing hearing on the same date. As alluded to herein above, sentence of fifteen (15) years imprisonment was meted to both the 3rd appellant against the 1st count and 1st and 2nd appellants against the 2nd count and two (2) years imprisonment to all appellants against the 3rd count or fine of two times of the value of the trophies. Further to that the land (shamba) and buildings therein, the properties of 3rd appellant located at Maili Saba area within Muheza District, Tanga Region were confiscated to

the Government. It is worth noting that court said nothing with regard to the 4th count facing the 2nd appellant. It is from that decision these appeals have been preferred by the appellants to express their dissatisfaction.

When the matter was called for hearing both parties were represented and their counsels prayed for leave of the court which was granted for them to proceed with hearing of the appeals by way of written submissions. The 1st and 3rd appellants as well as the 2nd appellant hired the services of Mr. Nehemiah Nkoko and Dennis Malamba learned advocates respectively, whereas the respondent enjoyed the services of Mr. Salimu Msemo, learned State Attorney. Both submissions were filed in time and I am thankful to both counsels for their time and well researched and written submissions as they have immensely assisted this court to reach its decision. Having travelled through the grounds of appeal and written submissions by the appellants, I have noted that apart from challenging the conviction, sentence and confiscation order meted to them by the trial court, the appellants are also assailing the propriety or legality of the judgment itself. This is well noted in their submissions in support of the 5th ground of appeal for the 1st and 3rd appellants as well as the 7th ground of appeal to the 2nd appellant. That being the position I find it imperative to address these two grounds first as determination of other grounds depends on the legality of judgment itself.

As shortly stated herein above, all appellants through the 5th and 7th grounds of appeal for the 1st and 3rd and 2nd appellants respectively are faulting the trial magistrate for convicting and sentencing them in contravention of the provisions of sections 235(1) and 312(2) of the Criminal Procedure Act,[Cap. 20 R.E 2002] (CPA). Submitting on this ground Mr. Nkoko for the 1st and 3rd

appellant argued that, in essence section 312(1) of the CPA makes it mandatory that a judgment must contain point or points for determination, decision thereon and reasons for the decision. Under section 312(2) of CPA, he stated, the requirement of the law is that on conviction the judgment must state 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 punished. He lamented that, at page 10 of the typed impugned judgment, the trial magistrate did not specify the offence and section under which the 1st and 3rd appellants were convicted of, which infraction of the law according to him, is fatal and goes to the root of the matter. He reasoned, the judgment which does not specify the offence with which the accused is convicted with and the section of the law violated, is illegal since the omission is fatal to the conviction and sentence as it was held by this court in the case of **Samwel Ibrahim Vs. R**, Criminal Appeal No. 50 of 2018 (HC-unreported). He also referred the court to the case of **John Mabula and 2 Others Vs. R**, Criminal Appeal No. 409 of 2007 (CAT-unreported) submitting that, the omission being fatal could not be cured by the provisions of section 388 of CPA.

The above argument aside, Mr. Nkoko added, the learned Principal Resident Magistrate in his judgment never pointed out the points for determination of the case as mandatorily required under section 312(1) of CPA instead constructed a report like judgment which ended up convicting the appellants without justification. The judgment written not in conformity with the guidelines of the provisions of section 312 of CPA, its style is suited for news reporting as it was once held by this court in the case of **Juma Shabani**

Mshindo Vs. R, Criminal Appeal No. 184 of 2018 (HC-unreported) Mr. Nkoko argued. It was his submission therefore that failure by the trial court to enter proper conviction and sentence as well as its failure to point out the points for determination of the case rendered the whole judgment a nullity, thus prayed the court to nullify the proceedings and set aside the judgment and conviction, the result of which is to set free the 1st and 3rd appellants. Mr. Malamba for the 2nd appellant arguing on the same point was very straight that the whole conviction of the appellant was in contravention of the above cited sections of the law. He urged the court to allow the appeal on that ground and set free the 2nd appellant.

In opposition Mr. Msemo for the respondent resisted the appeals and more particularly on the submissions by the learned counsels for the appellants that, the trial court judgment was entered in contravention of the provision of section 235(1) and 312(2) of the CPA. He countered, the said provisions of the law were complied with by the learned trial Principal Resident Magistrate as all appellants were convicted, sentenced and orders passed in accordance with the law. He said, at page 1-2 of the typed judgment the offences with which the appellants were booked with were clearly spelt before the court found them guilty as charged, convicted and sentenced them as indicated in page 23 of the typed judgment. In view of that submission he invited the court to dismiss the two grounds of appeal and the entire appeal for want of merit. In the alternative Mr. Msemo submitted, should the court find the judgment infracted the provisions of section 235(1) and 312(2) of the CPA, then the proper remedy is to remit the case to the trial court with direction for the trial magistrate to compose a proper

judgment. To reinforce his stance he referred the court to the case of **Emmanuel Noa and 2 Others Vs. R**, Criminal Appeal No. 361 of 2016 (CAT-unreported) whereon the Court of Appeal remitted the case file to the trial court with directions for the trial magistrate to enter conviction and deliver judgment in accordance with the provision of section 235(1) and 312(2) of the CPA. With regard to the case of **Juma Shaban Mshindo** (supra) relied on by the 1st and 3rd appellant, Mr. Msemo submitted the same was immaterial as in the present case the trial court complied with the requirement of the law for indicating the points for determination of the case. As such he argued the same was not binding to this court and furthermore that, in that case the court ordered for trial de novo of the case and not acquittal of the accused persons. The proposition by Mr. Msemo for remission of the case to the trial court for composing the proper judgment was resisted by Mr. Nkoko in his rejoinder submission submitting that, it will be prejudicial to the appellants and will give a room for the trial court to rectify the error already highlighted in the submissions by the appellants. With regard to the non-compliance of section 235(1) and 312(2) of the CPA he countered, the respondent in a way conceded to the fact that there was no proper conviction and sentence of the appellants for failure of the trial court to state the offence and the law violated by the appellants when convicting them coupled with lack of points for determination of the case in the judgment which rendered whole judgment a nullity. He therefore reiterated his earlier prayers for allowing the appeal. Mr. Malamba on this ground had no rejoinder.

I have taken time to peruse the record in particular the impugned judgment as well as paying due consideration to the submissions from both learned counsels for the parties. The crux of the matter is whether the trial court's judgment contravened the provisions of section 235(1) and 312(2) of the CPA as alleged by both counsels for the appellants, the assertion which is vehemently resisted by Mr. Msemo for the respondent. It is trite law that, every trial court after conclusion of hearing of both the complainant and accused person's case in any criminal case, shall under section 235(1) of the CPA enter conviction and sentence the accused person or issue any other appropriate order or acquit or discharge him under section 38 of the Penal Code. The said section reads:

> *235.-(1) The court, having heard both the complainant and the accused person and their witnesses and the evidence,* ***shall convict the accused and pass sentence upon or make an order against him according to law or shall acquit or discharge*** *him under section 38 of the Penal Code.* (Emphasis supplied).

The import of this section in my considered opinion imposes a mandatory duty to the court to make sure that when composing its judgment the accused is convicted and sentenced or acquitted or discharged or treated otherwise in accordance with the law. In other words when the accused is convicted and sentenced or acquitted or discharged, contents of the judgment as provided by the law must be followed to the letters. Section 312 of the CPA provides for the contents of the judgment. Subsection (1) states, every judgment 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. Section 312(1) reads:

> *312.-(1) 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.* (Emphasis is supplied).

There is a complaint by Mr. Nkoko that in the impugned judgment the learned trial magistrate did not point out the points for determination of the case as required by the law, the complaint which was not countered by Mr. Msemo, thus implied concession of the contentions by the respondent. A critical perusal of the judgment has have it that, it is true as submitted by Mr. Nkoko the impugned judgment has no points for determination of the case against the appellants. The law makes it mandatory that those points or issues must be formulated and the decision thereon made something which is missing in the case at hand. The importance of point(s) for determination in the judgment is like a compass in the cruising ship or dhow in the deep sea. The ship or dhow without compass is likely to get lost in the deep sea and dock on unintended or unexpected port for loss of direction. The compass in the ship or dhow helps the captain find the bearings points that assures him of accurate direction of the ship or dhow hence safe cruising

and docking at the right destination port. The judgment without points for determination to me is like a ship or dhow without compass which definitely leads astray the magistrate or judge hence arrival into wrong conclusion(s) of the case for want of proper point(s) or issues for determination on the matters at dispute. It makes him/her to sail into unknown direction the result of which is to arrive at a report like judgment as it was held by this court in the case of **Juma Shaban Mshindo** (supra) as rightly cited by Mr. Nkoko, where the Court was faced with more or less similar issue to the present one on non-compliance of section 235(1) and 312(1) of the CPA. This court said:

> ***"The trial magistrate never pointed out the points which the case fell on and determination thereon instead he constructed a report like judgment and at the end convicted the appellant.*** *... With regard to the case at hand I would also say the* ***style used by the trial magistrate in writing the judgment is unusual since it does not conform with the guidelines outlined under section 312 of the CPA ,(Cap. 20 R.E 2002), the style is suited for news reporting."*** *(Emphasis supplied)*

Applying the above cited principle which I subscribe to, to the facts of this case where also the points for determination were not pointed out by the learned trial magistrate, I would hold as hereby do, that the purported judgment was not in conformity with the provisions of section 312(1) of the CPA.

Yet there is another complaint by the appellants on the infraction of the provisions of section 312(2) of the CPA that imposes a mandatory duty for the trial magistrate when entering conviction of the accused to specify the offence of which, and the section of law under which the accused person is convicted and the punishment to which he is sentenced. The said section 312(2) of CPA reads:

> *(2) 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****. (emphasis supplied)*

The purposes of the above requirement in my considered opinion is in three folds. **One**, to make sure that the provisions of section 235(1) of the CPA are served by convicting the accused in accordance with the law, **second**, the accused is exactly being convicted with the offence he has been charged with or specific offence established under the law or any other law, **third**, the accused is specifically convicted under the proper section of the law he is being charged with. This court in the case of **Samwel Ibrahim** (supra) where the trial magistrate had stated that *"this court founds the accused guilty and consequently convicted"* remarked that:

> ***"My judgment, it was imperative for the trial court to specify the offence the accused is convicted with and the section of the law that has been violated. Omission to comply with the respective provision of the law, it is trite***

law, is fatal to the conviction and sentence. *There are many judicial pronouncements in support of that proposition. For instance,* ***John s/o Charles Vs. R****, Criminal Appeal No. 190 of 2011, (CAT-unreported) where it was stated:*

> *"Judgment writing is subordinate courts is governed by section 235 and 312 of the CPA, Cap. 20 R.E 2002."* (Emphasis is added)

In the present matter, a glance of an eye at page 10 of the typed judgment, has unearthed anomaly and it is my conviction that, the purported conviction by the learned Principal Resident Magistrate was not in conformity with the provisions of section 312(2) of the CPA, for failure to cite the specific offences and the sections of the law in which the appellants were convicted with in each count. Instead he made the general statement, as quoted hereunder:

> *"The prosecution case as levelled abundantly proves the alleged offences and the court find the case against the accused is proved beyond reasonable doubt and* ***I find them, all three, guilty as they stand charged, furthermore the court convict them*** *forthwith."*
>
> ***Sdg: Hon. H. Shaidi – PRM***
>
> ***19/02/2019***

It is evident from the above excerpt of the judgment that when convicting neither the offences nor sections of the law under which the appellant were convicted with, were ever specified by the learned trial magistrate, as per

the requirement of the law in section 312(2) of the CPA. It is from that premises I distance myself from Mr. Msemo's submission that the law was complied with as the said offences and sections of the law were specified at page 1-2 of the judgment, since what was stated in the judgment at pages 1-2 were the offences facing the appellants and not the ones convicted with as required by the law under section 312(2) of the CPA. I would therefore shoulder up with Mr. Nkoko's and Mr. Malamba's submissions that, the provisions of sections 235(1) and 312(1) and (2) of the CPA were infracted for failure of the learned Principal Resident Magistrate to point out points for determination of the case, specify the offence and sections of the law with which the appellants were convicted with, the infraction which I hold to be fatal and renders the entire judgment a nullity. The 5th ground of appeal by the 1st and 3rd appellants and 7th ground by the 2nd appellant therefore have merits and I uphold them. This finding has the effect of disposing this appeal, therefore I see no reason to labour into discussion and determination of the rest of the grounds for being academic exercise which I am not prepared to take at the moment. The appeal is therefore allowed on those two grounds.

Now that being the position what is the proper relief or course to be taken by this court? Mr. Nkoko and Mr. Malamba has urged the court to quash the proceedings and set aside the judgment and orders thereto, hence release the appellants forthwith. The proposal is resisted by Mr. Msemo for the respondent who in alternative invited the court to remit the case file to the trial court with directions for the trial magistrate to compose the judgment in accordance with law, the proposition which is challenged by Mr. Nkoko in that, it is prejudicial to the appellants fate in this case and will avail the trial

court with opportunity to rectify its errors. I disagree with Mr. Nkoko's proposition that the remission of the case file to the trial court for composing a proper judgment will be prejudicial to the appellant and allow the trial court to rectify its error. The reason is that by declaring the judgment a nullity the implication is that the appellants were never convicted by the trial court. To set them free in my opinion will be prejudicial to the prosecution as their case will be gone undetermined. In criminal matters every court is legally bound determine the case against the accused persons guided by the points for determination of the case by either finding them guilty, convict and sentence them accordingly or acquit them for want of evidence or make finding otherwise but in accordance with the law.

In the premises and for the fore stated reasons I invoke the revisionary powers bestowed to me under section 373(1)(a) of the Criminal Procedure Act, [Cap. 20 R.E 2019] and proceed to nullify the sentence hearing proceedings and set aside the judgment of the trial court and orders thereto dated 19/02/2019. The Court of Appeal in the case of **Emmanuel Noa and 2 Others** (supra) being confronted with the similar situation after nullifying the judgment remitted the case file to the trial court for composing the judgment, and had this to say:

> *"In the end, in view of the circumstances of this case, and in the interest of justice, we have no other option than to order that,* ***the file in respect of Criminal Case No. 15 of 2015, containing the remaining proceedings be remitted to the trial court with direction to the trial magistrate to compose a proper judgment in compliance with the***

provisions of sections 235(1) and 312(2) of the CPA*. The course we have taken finds support from our decision in the case of* ***Ramadhan Athumani Mohamed Vs. Republic****, Criminal Appeal No. 456 of 2015 (unreported) on the way forward that:*

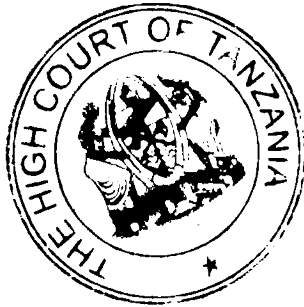
> *"Failure to enter conviction is fatal and incurable irregularity which renders such judgment a nullity. Therefore, record should be remitted to the trial court for it to enter conviction and deliver a judgment in accordance with sections 235(1) and 312 of the CPA. (Emphasis added)."* ***(Emphasis Supplied)***

Guided with the principle in the above cited case, and having considered the time of six (6) years spent by the appellants in jail and the period left if they were to serve the fifteen years which they were formerly sentenced with, I find that it will be in the interest of justice, the file in Economic Case No. 21 of 2014, and without affecting the proceedings of the case before composing the judgment, be remitted to the trial court for the trial magistrate to compose the judgment, convict if he so finds proper and sentence the appellants in compliance with the provisions of sections 235(1) and 312(1) and (2) of the CPA.

I further order that this order should be effected as soon as practicable. In the meantime appellants should remain in custody pending compliance of the order by the Resident Magistrates Court of Dar es salaam at Kisutu.

It is so ordered.

DATED at DAR ES SALAAM this 31st day of May, 2021



E. E. KAKOLAKI

JUDGE

31/05/2021

Delivered at Dar es Salaam today on 31st day of May 2021 in the presence of Mr. Alex Kaaya advocate holding briefs for Mr. Nehemiah Nkoko advocate for the 1st and 3rd appellants and Mr. Dennis Malamba advocate for the 2nd appellant, Mr. Salimu Msemo, State Attorney for the respondent and Ms. Monica Msuya, court clerk.

Right of appeal explained.

E. E. Kakolaki

JUDGE

31/05/2021