IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

CRIMINAL REVISION NO. 3 OF 2020

THE REPUBLIC ..... APPLICANT

VERSUS

NYAWAYE JOGO NYACHIRIGA ..... RESPONDENT

(Revision from the decision of the District Court of Bunda at Bunda in Criminal Appeal No. 24 of 2019)

JUDGMENT

27th July, 2021

KISANYA, J.:

Before the Bunda Urban Primary Court, Nyawaye Jogo Nyachiriga was arraigned with the offence of contempt of court contrary to section 114 (1) (a) (c) of the Penal Code [Cap. 16, R.E. 2002] (now R.E. 2019). It was alleged in the charge sheet that, on 26th November, 2019 at Bunda Urban Primary Court, Nyawaye showed disrespect in answering question in the course of defending Civil Case No. 266 of 2019, and caused an obstruction of a judicial proceeding. In the end, the respondent was convicted as charged and sentenced to serve one month jail term.

Aggrieved, the respondent appealed to the District Court of Bunda which quashed the conviction and set aside the sentence due to the irregularities in the proceedings of the trial court. It was the District Court's findings that the court contempt proceedings ought to have conducted in the proceedings in which the offence of court contempt was committed.

Following that decision, this Court found it appropriate to call for and examine the records of the trial court and first appellate court with a view to satisfy itself on the propriety, legality or otherwise of the proceedings and the decisions thereto.

At the hearing of this matter the republic was represented by Mr. Nimrod Byamungu, learned State Attorney, while, the respondent enjoyed the service of Mr. Baraka Makowe, learned advocate. Parties were asked to address the Court on the following issues:

1. Whether the contempt of court proceedings were required to be instituted in the case file in which the offence was committed.
2. If the first issue is answered in affirmative, whether the proper recourse was to quash the decision and set aside the conviction and sentence.

As regard the first issue, Mr. Byamungu contended that the District Court was right in holding that the contempt of court proceedings ought to have been instituted in the case file in which the offence was committed. On his part, Mr. Makowe was of the view that criminal proceedings on contempt of court cannot be merged in the civil case.

Mr. Makowe also asked the Court to consider the legality of the charge against the respondent. He was of the view that, the trial magistrate was not required to draft and sign the charge and at the same time hear and determine the matter.

As regards the second issue, both learned counsel were at one that the District Court ought to have nullified the proceedings of the trial court and make an order for retrial after quashing and setting aside the conviction and sentence.

I have considered the submissions by the learned counsel for the parties. In my view this matter can be disposed of by addressing the issue whether the charge preferred against the respondent was proper and whether the trial magistrate determined the matter in accordance with the law.

It is on record that the charge was predicated under section 114 (1) (a) (c) of the Penal Code (supra). As indicated earlier, the respondent is alleged to have shown disrespect in the course of defending Civil Case No. 266 of 2019 which was pending before the trial court. The crux of the matter is to the effect that, he answered the question put to him in disrespectful manner and causing obstruction of the court proceedings. For better understanding of the discussion at hand, I find it appropriate to reproduce the statement of offence and particulars of offence levelled against the respondent:

> ***"KOSA NA KIFUNGU CHA SHERIA: KUDHARAU MAHAKAMA K/F 114(1)(a) (c), K.A. SURA YA 16, R.E. 2002***
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> ***MAELEZO YA KOSA****: Wewe NYAWAYE S/O JOGO unashtakiwa kuwa mnamo tarehe 26/11/2019, majira ya saa 10.45 hrs, ukiwa ndani ya Mahakama ukiendelea na shauri lako la madai no. 266/2019 uridharau mahakama wakati ukiulizwa maswali kwenye shauri hilo, ulijibu maswali bila staha na kusababisha vurugu na shauri la madai dhidi yako kutokusikilizwa, ulifanya hivyo ukijua ni kosa na kinyume cha Sheria ya Jamhuri ya Muungano wa Tanzania.*
>
> *Sgnd*
> ***HAKIMU***
> ***MAHAKAMA YA MWANZO BUNDA MJINI***

26/11/2019"

Was the charge proper? The principle has always been that an accused must know the nature of the case preferred against him. In order to ensure that this principle is complied with, the essential ingredients of the offence must be disclosed in the charge. See the case of **Musa Mwaikunda vs R** (2006) TLR 387 where similar stance was stated.

In this case at hand, the respondent was alleged to have showed disrespect in answering the questions put to him when defending Civil Case No. 266 of 2019. However, the manner in which the respondent answered the questions was not stated. In that regard, the respondent was denied him to know the nature of offence levelled against him in order to show cause or prepare his defence. Again, I find it apposite to reproduce his reply when called upon to show cause as to why he should not be punished. He stated:

> *"Niliulizwa na mzee wa Mahakama swali na nikajibu ipasavyo, labda kama mahakama ina lingine na mimi"*

In my view, the above answer manifests how the particulars of offence had insufficient information for the respondent to show cause.

As a result the appellate court and this Court were not in a position of arriving at an informed decision whether the respondent's act amounted to court contempt. For the foresaid reason, the charge against the accused was incurably defective.

The second issue is on the procedure taken by the trial court in dealing with this case. I have no flicker of doubt that the circumstances of the case fall under section 114 (1) (a) and (b) of the Penal Code (supra) cited in the statement of offence. Therefore, the procedure for dealing with a contempt of court under the circumstances of this case is provided for under section 114 (2) of the Penal Code, which reads:

> *"When any offence against paragraphs (a), (b), (c), (d), or (k) of subsection (1) is committed in view of the court, the court may cause the offender to be detained in custody and, at any time before the rising of the court on the same day may take cognizance of the offence and sentence the offender to a fine of four hundred shillings or in default of payment to imprisonment for one month."*

Reading from the above provision, it is apparent that the trial magistrate or judge whose offence of contempt of court is committed in his presence has jurisdiction to try and convict the accused by dealing with the matter summarily before the rising of the court on the day the

contempt is committed. Thus, if the matter is not dealt with summarily, the trial magistrate or judge has no power to try and convict the said accused. This position was stated in **John Robert Maitland vs R**, Criminal Appeal No. 179 of 2011, CAT at Mwanza (unreported) where the Court of Appeal held that:

> *It is only where the matter is dealt with summarily that a trial judge or magistrate has powers to convict and sentence an accused who has committed a contempt of court in his presence."*

It is my considered opinion that, where the act of court contempt is committed in the course court proceedings, apart from dealing with the contempt before the rising of the court, the matter is taken to have been dealt with summarily when the charge is brought in the same proceedings. This is so when it is considered that the court records everything transpiring during the court proceedings. Therefore, if the matter is not dealt within the same proceedings, the appellate court will not be in a position of deciding whether the act complained of amounted to court contempt.

Now, the offence subject to this matter was committed in the course of hearing Civil Case No. 266 of 2019. However, as rightly held

by the District Court, the court contempt proceeding were not dealt within the said Civil Case No. 266 of 2019. Instead, a formal charge was charge was filed in the court. The said charge was drafted and signed by the magistrate who had presided over Civil Case No. 266 of 2019, was filed in the court. It was registered as Criminal Case No. 447 of 2019, heard and determined by the same magistrate. In the circumstances, I am of the view that the matter was not dealt with summarily as required by the law. Yet, as rightly argued by Mr. Makowe, the magistrate herself dealt with the matter after the respondent had committed the offence of contempt of court. This was incurable irregularity because the learned trial magistrate acted three roles to wit, complainant, prosecutor and magistrate. The position would have been different had the matter been dealt within the same case file.

In view of the foregoing irregularities, I hold that the proceedings and orders of the trial court were a nullity. On the way forward, I agree with the learned counsel for both parties that, upon finding the procedural irregularity in the proceedings of the trial court, the District Court ought to have nullified or quashed the same. This was not done, the learned Senior Resident Magistrate quashed the decision and set

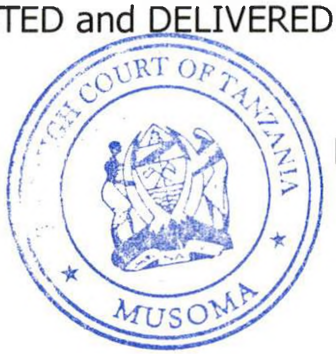
aside the conviction and order while leaving the proceedings intact.

Both counsel were of the view that the District Court ought to have ordered for retrial. With respect, I have considered that the decision of the District Court was delivered at the time when the respondent had already served the sentence imposed by the trial court. Therefore, it was not in the interest of justice to order for retrial.

In the end, I hereby nullify all the proceedings and orders of the trial court and uphold the decision of the District Court in which, the conviction and sentence imposed by the trial court were quashed and set aside. I make no order for retrial due to the foresaid reason.

It is so ordered.

DATED and DELIVERED at MUSOMA this 27th day of July, 2021.



E. S. Kisanya
JUDGE