

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

HIGH COURT CRIMINAL APPEAL NO. 106 OF 2019

(Original Criminal Case No. 206 of 2010 of the District Court of Bukombe District at Bukombe)

MADUKA S/O PAULINEAPPELLANT
versus
THE REPUBLICRESPONDENT

RULING

28th & 30th July, 2021

RUMANYIKA, J.:

When, with respect to 27/09/2011 conviction and custodial sentence of 30 (thirty) years for the offence of armed robbery C/s 287A of the Penal Code was once again, but this time around 10 years later called on 28/07/2021 for hearing, yet for the same reason of the missing original records it could not take off despite several and repeated orders calling for the records. From the outset it is also worth to be noted that according to records the first order was made say 2 years plus ago on 19/7/2019 and, like the court was now fed up, but pursuant to the rule in the land mark case of **Robert Madololyo v. Republic**, Criminal Appeal No. 486 of 2015 (CA) at Tbr, unreported with the view to having court records reconstructed, as, in this case all the respective stake holders were duty

bound to supply whatever documents that each one of them had in possession Mgeyekwa, J ordered as such on 14/4/2021 however even on lapse of the three (3) months plus nothing came out.

Surely the issue now is not whether the appeal should indefinitely remain in the court register but rather it is whether the court could proceed to determining the appeal on merits without the original records. The answer is no.

As it now stands, at least out of the 30 years custodial sentence of course with 1/3 remission, with effect from 27/9/2011 the appellant had now served say ten (10) years only therefore he had another ten (10) good years to go. In all fairness it could not be said that appellant had served such a substantive part of it as reasonably to warrant him an acquittal/discharge as the case may be. If anything it was a fit case for an order of retrial such that and for the interest of justice should he be further convicted and sentenced the decade that the appellant had so far served behind the bars it shall be accordingly considered and deducted. I would increasingly hold that in order to curb the unfortunate predicaments where chances of ill intent court users and, in the most unlikely event sabotage by few court registry officers, where the records were deemed lost or

destroyed as the case may be, courts should warn themselves and only reluctantly acquit the subjects or order retrials as the case may be much as the courts remained the sole custodians of the registries and records.


In the upshot, the appeal is allowed only to the extent and with orders:- (1) the conviction and sentence are quashed and set aside respectively (2) the appellant is discharged (3) should the Director of Public Prosecutions wish to, the trial Bukombe district court is, with immediate dispatch ordered at the earliest possible opportune to try the case **de novo**. It is so ordered.

Right of appeal explained.


S.M. RUMANYIKA
JUDGE
28/07/2021

The ruling delivered under my hand and seal of the court in chambers this 30/07/2021 in the absence of the parties.




S.M. RUMANYIKA
JUDGE
30/07/2021