

IN THE HIGH COURT OF TANZANIA

AT DODOMA

CRIMINAL APPEAL NO. 144 OF 2020

[Appeal from the Judgment of the District Court of Bahi at Bahi in Criminal Case No. 60 of 2019, Hon. Z.S. Mpangule, SRM]

BARAKA ELIAS @ AINEA APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

5th August, 2021 & 5th August, 2021

M.M. SIYANI, J.

On 21st day of August, 2019, Baraka Elias @ Ainea, who is the appellant herein, was arraigned at Bahi District Court and indicted for an offense of Rape contrary to section 130 (1) (2) (e) and 131 (1) of the Penal Code Cap 16 RE 2002 and Impregnating a School Girl contrary to section 60 A of the Education Act Cap 353 RE 2002 as amended by section 22 of the Written Laws (Miscellaneous Amendments) Act No. 2 of the 2016. It was alleged in respect of both counts that in diverse dates between December, 2018 and July 2019, the appellant while at Mayamaya a village which is located in Bahi District, Dodoma Region, had carnal knowledge of a school

girl aged sixteen (16) years (name withheld to conceal the victim's identity) and consequently impregnated her.

Upon full trial, Baraka Eliasi @ Ainea, was convicted and awarded a term of thirty (30) years imprisonment for each of the two counts. Aggrieved by both the conviction and sentences, the appellant is now in this temple of justice challenging the said findings. His Petition of Appeal contains five (5) grounds of complaints which for the reasons that will be noted shortly, I will not reproduce its contents in this ruling.

At the hearing of the appeal, Mr Godfrey Wasonga represented the appellant and Ms. Judith Mwakyusa, the learned State Attorney appeared for the Respondent/Republic. Given a chance to address the court, Mr. Wasonga was quick to draw the attention of the court on the procedural irregularity on the manner the trial court recorded its proceedings. The learned counsel contended that the presiding magistrate omitted to sign the proceedings after recordings the defence testimonies as a mandatory requirement of law under section 210 (1) (a) of the Criminal Procedure Act Cap 20 RE 2019. He argued that such omission was an incurable irregularity which rendered the whole proceedings and Judgment thereof, a nullity. As a result, Mr. Wasonga moved the court to quash the defence

proceedings and order re-hearing of the same in accordance with the law.

In response, Ms Judith Mwakyusa had nothing to controvert. She simply conceded with counsel Wasonga's submission.

Having heard the parties, I agree with the learned counsels that indeed, the trial court's proceedings reveal failure by the learned trial Magistrate to comply with the requirements of section 210 (1) (a) of the Criminal Procedure Act Cap 20 RE 2019, which provides the manner of recording of evidence during trial. For easy of reference, I have reproduced the contents of the said provision as hereunder:

210: (1) In trials, other than trials under section 213, by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner:

*(a) The evidence of each witness shall be taken down in writing in the language of the court by the magistrate or in his presence and hearing and under his personal direction and superintendence and **shall be signed by him and shall form part of the record.***

The law above makes it mandatory for a magistrate or a presiding officer, to sign the proceedings after recording evidence of each witness. The rationale for that requirement is to ensure authenticity of court's proceedings. In the matter at hand, the learned senior trial Magistrate, having recorded evidence given by the appellant who testified as the sole defence witness on 10th day of June, 2020, did not sign the same. Section 210 (1) (a) of the Criminal Procedure Act (supra) has been couched in mandatory terms which presupposes that its compliance is not an option.

Failure to comply with that provision, is apparently a fatal procedural irregularity which renders the recorded evidence a nullity and of no value.

In the case of **Yohana Mussa Makubi and another Vs Republic** Criminal Appeal No. 556 of 2015 a decision which referred with approval the decision in **Walii Abdallah Kibitwa and two Others Vs Republic**, Criminal Appeal No. 181 of 2006 (unreported), the Court of Appeal dealt with a similar and observed the following.

We are thus, satisfied that, failure by the Judge to append his/her signature after taking down the evidence of every witness is an incurable irregularity in the proper administration of criminal justice in this country. In view of the stated

omission the trial proceedings of the High Court were indeed vitiated and are a nullity and neither did they constitute the record of the trial and the appeal before us.

In **Magita Enoshi Matiko Vs Republic**, Criminal Appeal No. 407 of 2017, the same apex court of the land observed that omission to sign after recording evidence renders such proceedings unreliable. The court thus stated:

..... the trial Judge did not sign after taking evidence of all the witnesses and therefore the authenticity of the proceedings is questionable. We may add that such evidence cannot be relied upon by the court to ground a conviction to an accused person.

In the case which is subject of the instant appeal, the omission to sign court proceedings, covered the defence case which was built by testimony from a single witness. Under section 210 (1) (a) of the Criminal Procedure Act (supra), the entire defence case was therefore a nullity and did not form part of the record.

In the upshot, since the defence case did not form part of the record, the conviction against appellant was a nullity of which this court cannot uphold or dismiss an appeal arising from such proceedings. As a result, I invoke revision powers conferred to this Court under section 373 (1) (a) of the Criminal Procedure Act Cap 20 Revised Edition of 2002 by quashing the defence proceedings and set aside the impugned Judgment and sentence imposed by the District Court of Bahi in Criminal Case No. 60 of 2019 with an order for remission of the trial court's record for it re conduct the defence case by hearing the appellant and his witnesses if any. Should the appellant be reconvicted after such hearing, the time he has spent in prison serving the current sentence should be taken into account when passing the sentence. It is do ordered.

DATED at DODOMA this 5th Day of August, 2021



M.M. SIYANI

JUDGE