

**IN THE HIGH COURT OF TANZANIA**

**AT DODOMA**

**CRIMINAL APPEAL NO. 31 OF 2020**

*[Appeal from the Judgment of the District Court of Singida at Singida in Criminal Case No. 273 of 2018, Hon. C. P Singano, Resident Magistrate]*

**PRISCUS TARIMO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

*5<sup>th</sup> May, 2021 & 6<sup>th</sup> May, 2021*

**M.M. SIYANI, J.**

On 18<sup>th</sup> March 2018, the appellant herein one Priscus Tarimo, was arraigned at Singida District Court and indicted for stealing by servant contrary to section 271 of the Penal Code Cap 16 RE 2002. It was stated in the particulars of offence charged that being an employee of Kiomboi General Store, the appellant a total stole 2633 crates of beer which came into his possession by virtue of his employment. At the conclusion of the trial, the appellant was convicted and sentenced to serve a term of four (4) years imprisonment and to compensate the complainant with the stolen crates or its equivalent value which is Tshs 61,891,600/=.

Dissatisfied, the instant appeal against both conviction and sentence has been preferred. The presented petition of appeal contains nine (9) grounds of complaints which for the reasons that will be noted shortly, I intend not to reproduce its contents in this ruling.

When the appeal came up for hearing on 5<sup>th</sup> May, 2021, the appellant appeared in person and unrepresented and Ms Janeth Mwakyusa, the learned State Attorney appeared for the Respondent/Republic. Given a chance to address the court, Ms Mwakyusa was quick to draw the attention of the court on a point of law that the presiding magistrate omitted to sign the proceedings after recording the testimonies of each witness contrary to a mandatory requirement of law under section 210 (1) (a) of the Criminal Procedure Act Cap 20 RE 2019. The learned State Attorney argued in line with the decision of the Court of Appeal of Tanzania in **Yohana Mussa Makubi and Another Vs Republic**, Criminal Appeal No. 556 of 2015 and contended that such omission was an incurable irregularity which rendered the entire trial proceedings and judgment thereof, a nullity.

Since the raised irregularity was not among the grounds of appeal, Ms Mwakyusa invited the court to invoke its revisional powers under section

373 (1) of the Criminal Procedure Act (supra) by nullifying the proceedings, quash both the conviction and sentence and order a retrial of the case. Presumably owing the technicality nature of the issue raised, the appellant being a lay person, had nothing substantial to argue.

Having revisited the record and what was submitted to me by the parties, I will hasten to agree with Ms Mwakyusa that indeed, the trial court's proceedings reveal failure by the learned trial Magistrate to comply with the requirements of law under section 210 (1) (a) of the Criminal Procedure Act which provides the manner of recording 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.** [Emphasis added]*

The law above makes it mandatory for 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 trial Magistrate, having recorded evidence of PW1, PW2 and PW3 on 18<sup>th</sup> March, 2019 did not sign the same. Similar omission can also be seen on the testimonies of the rest of the prosecution witnesses. There was also completely no authentication of the proceedings even on the defense testimonies. Section 210 of the Criminal Procedure Act (supra) has been couched in mandatory terms which presupposes that its compliance is not an option.

The law is now settled that failure to sign proceedings after recording evidence of each witness, is an incurable irregularity and such proceedings are rendered a nullity as they do not constitute party of the record. In my considered opinion, depending on the circumstances of each case, where failure to sign proceedings extends to evidence from both the prosecution and defence side like in the instant appeal, its only available remedy is to expunge the proceedings and order its retrial. I am fortified in this conclusion by the decisions of the apex court of the land in **Magita Enoshi @ Matiko Vs Republic**, Criminal Appeal No. 407 of 2017 and **Sabasaba Enos @ Joseph Vs Republic**, Criminal Appeal No.411 of

2017 where the Court of Appeal, unanimously found the omission vitiated the entire proceedings of the trial, ordered for retrial of the case.

The above said, as all testimonies recorded from both the prosecution and the defence side, were not signed by the presiding magistrate, such proceedings did not form part of the record. The trial against the appellant in the instant case, was therefore a nullity and this court cannot either uphold or dismiss what is a nullity. As a result, I invoke revisional powers conferred to this court under section 373 (1) (a) of the Criminal Procedure Act Cap 20 RE 2019 by quashing the trial proceedings recorded from 8<sup>th</sup> February, 2019 when the first prosecution's witness testified, to 2<sup>nd</sup> July 2020 when the defence case was closed and set aside the judgment and sentence imposed by the District Court of Singida in Criminal Case No. 273 of 2018. Considering the circumstance of the case, I order an expedited fresh trial before another magistrate of competent jurisdiction and should the new trial lead to a conviction, the time the appellant 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 5<sup>th</sup> Day of May, 2020**

 **M.M. SIYANI**  
**JUDGE**