

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MUSOMA

AT MUSOMA

PC CRIMINAL APPEAL NO. 5 OF 2021

ROBERT RWANDA NYADENDA APPELLANT

VERSUS

GODFREY BINAISA RESPONDENT

***(Appeal from the decision of the District Court of Tarime in
Criminal Appeal No. 58 of 2020)***

RULING

10th September and 3rd November 2021

KISANYA, J.:

The appellant, Robert Rwanda Nyadenda was tried and convicted by the Riagoro Primary Court, of criminal trespass contrary to section 299 of the Penal Code [Cap. 16, R.E. 2019]. It was alleged in the particulars of the offence that, on 7th July, 2020 at 0600 hours, at Ngope village within Rorya District, he trespassed into the plot of land owned by Godfrey Binaisa by planting trees and building a house thereon.

Upon conviction, the appellant was sentenced to pay a fine of TZS 300,000 or serve six months imprisonment. In addition, he was ordered to pay compensation to the tune of TZS 200,000/= in favour of the respondent, Godfrey Binaisa.

The appellant contested the trial court's conviction and sentence through appeal lodged in the District Court of Tarime at Tarime. In terms of judgment

alleged to have been signed and delivered on 19th February 2021, the appellant's appeal was dismissed for want of merit. Dissatisfied with the decision of the District Court, the appellant lodged the present appeal before this Court. He expressed three grounds of appeal. However, I do not intend to reproduce the said grounds for the reasons to be revealed in this judgment.

When the appeal was called on for hearing, the appellant and respondent appeared in person, unrepresented.

At the outset, the parties were called upon to address the Court on two issues to the following effect. *One*, whether there is a judgment of the District Court which gave rise to this appeal. This was after noticing that the judgment of the District Court was not signed by the learned resident magistrate who heard the appeal. *Two*, if the first issue is answered in affirmative, whether the present appeal is timeous.

Responding to the first issue, both parties were of the view that, the judgment of the District Court was duly signed by the resident magistrate who heard the appeal. In that regard, they submitted that the appeal was competent before the Court.

I have gone through the record and the submission by both parties. The first issue is founded on rule 22 of the Judicature and Application of Laws (Criminal Appeals and Revisions in Proceedings Originating from Primary

Courts) Rules, 2021. The said provisions require the judgment of the appellate court to be signed, dated and pronounced in open court. It reads as follows:

"The judgment shall be signed, dated and pronounced in open court."

The consequence of failure to sign the judgment was stated by the Court of Appeal **Patrick Boniphace vs R**, Criminal Appeal No. 2/2017 (unreported) where it was held as follows: -

"In the matter at hand, since the judgment of the trial court was not signed and dated by the trial magistrate who conducted the trial, there was no judgment to be appeal against before the High Court."

Borrowing a leaf from the above decision, failure to sign a judgment renders it a nullity. Therefore, no appeal can lie against the judgment of the district court that is not signed by the magistrate who heard the appeal.

In the present appeal, both parties are of the view that the judgment of the District Court of Tarime was duly signed by the magistrate who heard the appeal. However, upon going through the record of the District Court, I find no judgment signed by V.L. Balyaruha -RM who heard the appeal. What is on record is the typed judgment. The same was not signed by said V.L. Balyaruha-RM. Although it was certified as a true copy of the original, the original judgment is not found in the case file.

As that was not enough, it is not known as to when the judgment subject to this appeal was delivered or pronounced to the parties. While the appellant contends that the judgment was delivered on 26th February 2021, the respondent submitted that it was on 19th February, 2021. In terms of the record, the last order was issued on 20th November 2020 when the District Court heard the appeal. Thereafter, the matter was fixed for judgment on 28th December 2020. The records do not reveal as to what transpired on 28th December 2020. Although the typed judgment shows that the judgment was delivered 19th February 2021, it is doubtful as to whether the judgment was delivered on that day. This is so because the resident magistrate who read the judgment to the parties did not sign the typed judgment to confirm that fact. It is my considered view that such issue goes to the root of the case. For instance, if it is taken that the judgment was delivered on 19th February 2021, the appeal is time barred because it was lodged on 25th March, 2021 and hence, beyond 30 days prescribed by section 25(1)(a) of the Magistrate Courts Act (Cap.11, R.E. 2019).

In view of the above, I have no flicker of doubt that the judgment of the District Court of Tarime in Criminal Appeal No. 58 of 2020 is a nullity for want of signature and the date on which it was pronounced or delivered. As a result, the appeal before this Court is incompetent for want of decision. From the foregoing, I will not consider the second issue and the grounds of appeal.

All said and done, the judgment alleged to have been passed by the District Court of Tarime is hereby quashed and set aside. It is further ordered that the case file to be remitted back to the District Court of Tarime and the resident magistrate (V.A. Balyaruha -RM) who heard the appeal directed to compose, sign and deliver the judgment according to the law. It is so ordered.

DATED at MUSOMA this 3rd day of November, 2021.




E.S. Kisanya
JUDGE

Court: Ruling delivered this 3rd day of November, 2021 in the presence of the appellant and the respondent. B/C Jovian present.


E. S. Kisanya
JUDGE
03/11/2021