

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

CRIMINAL APPEAL CASE NO.105 OF 2021

(Original Criminal Case No.206 of 2017 from the District Court of Chunya)

MACHIYA SONGAMBELE.....1ST APPELLANT

MACHANYA SAAKUMI.....2ND APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Hearing: 20/06/2022

Date of Ruling: 20/06/2022

MONGELLA, J.

As presented by Mr. Baraka Mgaya, learned State Attorney and also vivid on the trial Court record, the Hon. Magistrate, Ngatunga RM, never complied with orders of this Court issued in Criminal Appeal No. 164 of 2019, by Hon. Ndunguru, J. The orders were to the effect that the trial Court composes a proper Judgment in accordance with the law by convicting the appellants separately on each count. The charge contained two counts under separate



provisions of the law and as per Section 312 (1) of the Criminal Procedure Act; Cap.20 R.E. 2019, each count has to be entered conviction separately by stating the offence and the law.

By not adhering to the orders of this Court in entering conviction in accordance with the law, the trial Court Judgment remains defective, incapable of being entertained on appeal by this Court. This is because, as per the decisions in **Amani Fungabikasi vs. Republic, Criminal Appeal No.270 of 2008** (unreported); **Hassan Mwambonga vs. Republic; Criminal Appeal No.410 of 20134**; **Kelvin Myovela vs. Republic, Criminal Appeal No.603 of 2015**, to mention, but a few; there is no proper Judgment before this Court to consider on appeal, thus rendering the whole appeal defective as well.

In the premises, the purported appeal at hand, is hereby struck out. The matter/case file is remitted back to the trial Court for it to compose a proper Judgment in accordance with the provisions of the law, by adhering to the directions by this Court in the appeal at hand and in Criminal Appeal No.164 of 2019, by Hon. Ndunguru, J. The orders by this Court shall be complied with within 30 days from the date of this Ruling, by the same Magistrate or another Magistrate, if the presiding Magistrate is not available.



Thereafter, the appellants may wish to lodge a fresh appeal, whereby the date of lodging the appeal shall start to run from the date of proper conviction. However, the date of confinement shall be the date they were sentenced at the first place.

It is so ordered.

Dated at Mbeya on this **20th** day of **June, 2022**.


L.M. Mongella

Judge

20/06/2022

