

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**PC. CRIMINAL APPEAL NO. 12 OF 2022**

*(Arising from the decision of the District Court of Tarime at Tarime in Probate Appeal No. 4 of 2021)*

**BETWEEN**

**NATHANIEL WALUSE.....APPELLANT**

***VERSUS***

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

*29<sup>TH</sup> & 29<sup>TH</sup> June, 2022.*

**A. A. MBAGWA J.:**

This is an appeal against conviction and sentence imposed by Tarime Urban Primary Court and subsequently upheld by the District Court of Tarime.

The appellant, Nathaniel Waluse was convicted of contempt of court by Tarime Urban Primary Court and consequently sentenced to one year imprisonment. Aggrieved by the verdict, the appellant appealed to the District Court of Tarime but to no avail. As such, he has knocked the doors of this Court to protest his innocence.

Without much ado, it is important to note that the conviction and sentence arose in course of proceedings in Probate No. 54 of 2017 in the Primary Court of Tarime Urban.

The background leading to the present appeal has a long and chequered story. However, the relevant facts may, in a nutshell, be recounted as follows.

The appellant applied for and was appointed an administrator of the estates of his late father Johnson Nyabange Waluse. However, his appointment was revoked by the High Court of Tanzania at Mwanza (Hon. Gwae J) vide PC. Probate No. 25 of 2016. It appears during the existence of his appointment, the appellant took possession of the certificate of title in respect of Plot No. 4 Block 'E' Tarime, one of the deceased's estates.

Following the revocation of appointment of Nathaniel Waluse as indicated above, Yusufu Nyabange Waluse applied for and was appointed a new administrator of the estates of the late Johnson Nyabange Waluse by Tarime Urban Primary Court via Probate No. 54 of 2017.

While discharging his duties as administrator, Mr. Yusufu Nyabange Waluse, on 25<sup>th</sup> May, 2020, informed the Court that he had sold the house

comprised in Plot No. 4 Block 'E' to Cornelius Investment 2020 (T) Limited and the proceeds of sale had been distributed to the heirs as agreed by family members. He thus prayed to close the probate file. Consequently, the court marked the probate case No. 54 of 2017 closed.

However, the record tells it all that on 1<sup>st</sup> October, 2020 Yusufu Nyabange Waluse appeared before the Court (T.J. Boah – RM) and informed the Court that Nathaniel Waluse had refused to hand him a genuine certificate of title thereby hampering the transfer of ownership process. He thus implored the court to compel the appellant, Nathaniel Waluse to surrender the said certificate of title.

In view thereof, the court issued a summons to Nathaniel Waluse to appear before the court on 3<sup>rd</sup> October, 2020. Nevertheless, on 3<sup>rd</sup> October, 2020 Nathaniel Waluse did not appear as such, the court issued an arrest warrant. On 12<sup>th</sup> October, 2020 Nathaniel Waluse appeared and he told the court that the disputed certificate of title was, at that time, in possession of his son who lives in Tanga. The court was not satisfied with excuse pleaded by Nathaniel Waluse hence it remanded him until the following day. On 13<sup>th</sup> October, 2020 the court further remanded him until

on 15<sup>th</sup> October, 2020 and thereafter the appellant continued to be in custody until 20<sup>th</sup> October, 2020.

According to the record, on 20<sup>th</sup> October, 2020 when the matter was called on, Nathaniel Waluse told the court that he was not read to surrender the title deed. At page 24 of the typed proceedings, the appellant is recorded to have said '**sitoi hati mahakama iamue chochote**'

Following the appellant's refusal, the court made a judgment in which it convicted the appellant of contempt of court contrary to section 114(1)(h) of the Penal Code and consequently sentenced him to one year imprisonment.

The appellant was aggrieved by the decision of the Primary Court hence he appealed to the District Court of Tarime but to no avail. Still dissatisfied, the appellant has come to this Court.

In his petition of appeal, the appellant included several complaints which can be reduced into one meaningful ground namely,

***'That the first appellate court erred in law and facts to uphold conviction and sentence imposed by the Primary Court of Tarime Urban'***

When this appeal was called on for hearing, the appellant appeared in person via teleconference whilst the Republic was represented by Frank Nchanila, learned State Attorney.

The appellant had nothing to submit instead he beseeched the Court to consider his complaints and ultimately allow his appeal and set him free.

Mr. Nchanila, on his part, was in full support of the appeal. He lamented that the trial magistrate did not adhere to the mandatory procedures in convicting the appellant. The learned State Attorney argued that the trial magistrate ought to frame the charge, read it to the appellant and afford him an opportunity to answer the charge and provide reasons as to why he ought not to be convicted. Nchanila observed that the procedures were violated hence the whole proceedings and consequent conviction were a nullity. As such, the learned State Attorney urged the Court to nullify the proceedings, quash and set aside conviction and sentence of the trial court and District Court. To fathom his line of argument, he referred this Court to the case of **John Robert Maitland vs Republic**, Criminal Appeal No. 179 of 2011, CAT at Mwanza at page 17 and 18.

Having moved the Court to nullify the proceedings, Mr. Nchanila urged the court to order a retrial. However, on being probed by the Court on the period already spent by the appellant in prison, he changed the position and prayed the court to set the appellant free.

I have given a considerable attention to the submissions made by the parties along with the record of appeal. The crucial question for determination of appeal is whether the Primary Court rightly convicted and sentenced the appellant.

It is common cause that the appellant was summarily convicted of contempt of court. It is a trite law that where the court opts to summarily convict the person, it must adhere to the following procedures;

- 1) A charge should be framed up and the accused should be given a chance to answer the charge
- 2) The accused should be called upon to show cause why he should not be convicted on that charge
- 3) The procedures should be reflected in the proceedings/record

See the cases of **Joseph Odhengo s/o Ogongo vs R.** (1954)21 E.A.C.A 202, **Sebastian Lothi and others vs R.** (1969) HCD 184,

**Ntibabaras/o Mwaloha vs R.** (1967) HCD 459 and **John Robert Maitland vs Republic**, Criminal Appeal No. 179 of 2011, CAT at Mwanza at page 17 and 18

Upon appraisal of the record, I found that the established procedures were violated. According to the proceedings dated 20<sup>th</sup> October, 2022, after the appellant had told the court that he was not ready to surrender the title deed, the court proceeded to compose the judgment in which it convicted the appellant of contempt of court. Admittedly, the court did not inform the appellant of the charge nor did it afford him the opportunity to show cause why he should not be convicted of the offence. As, rightly submitted by the learned State Attorney and in light of the decisions above, this was a fatal anomaly which vitiates the whole proceedings.

Owing to the procedural irregularities committed by the trial Primary Court, the conviction and resultant sentence were a nullity. As such, the decision of the District Court of Tarime was also a nullity as it resulted from nullity proceedings. Consequently, it is my unfeigned findings that the appellant was wrongly convicted.

Another aspect worth of deliberation is sentence. As depicted in the record, the appellant was sentenced to one year imprisonment. Section 114(1) of the Penal Code is very clear that a person convicted of court contempt is liable to imprisonment for six months or a fine not exceeding five hundred shillings. It therefore goes without saying that the sentence of one year imprisonment was illegal as it is not backed up by law.

That said and done, I nullify the proceedings of the lower courts and consequently quash and set aside both conviction and sentence. The appellant, Nathaniel Waluse should be released immediately unless he is held for other lawful cause.

This appeal is therefore allowed.

It is so ordered.

The right of appeal is explained.



  
**A. A. Mbagwa**

**JUDGE**

**29/06/2022**