

**IN THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(DISTRICT REGISTRY OF MBEYA)**

**AT MBEYA**

**CRIMINAL APPEAL NO. 82 OF 2022**

*(From the decision of the District Court of Mbozi at Vwawa (Hon. A. H. Waziri, RM) in Criminal Appeal No. 03 of 2018. Originating from Criminal Case No. 326 of 2017 in Mwambani Primary Court.)*

**ANDREA s/o GABRIEL.....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

*Date of Hearing : 20/06/2022*

*Date of Ruling : 28/06/2022*

**MONGELLA, J.**

This matter emanates from the primary court of Mwambani in Mbozi district in Criminal Case No. 326 of 2017. In this case the appellant was charged for the offence of robbery contrary to section 285 and 286 of the Penal Code, Cap 16 R.E. 2002. The complainant who instituted the charges against him was one Amon Godfrey Mwalukasa. The trial court found him guilty of the offence charged and sentenced him to 15 years imprisonment. It further ordered him to return the robbed items which were T.shs. 3,500,000/-, a motorcycle make Kinglion with registration number MC 507 BPP and a blue card.

Aggrieved by the decision he appealed to the district court of Mbozi, but against the Republic as the respondent. The district court dismissed his appeal, hence this second appeal. On the date of hearing however, Mr. Baraka Mgya, learned state attorney representing the respondent Republic, hinted to the Court that there is a legal issue that needed to be addressed first before proceeding with hearing.

When given the flow, he challenged the appellant's appeals in the district court and in this Court on the ground that the complainant in the original suit, that is, Amon Godfrey Mwalukasa was never joined in both appellate stages. He referred the decision of the Court of Appeal rendered in the case of **Simon Martin vs. Republic**, Criminal Appeal No. 457 of 2017 in which directions on how the Republic is to be joined in appeal from the primary court to the district court was provided.

Specifically referring to page 7 to 9 of the said decision, he submitted that the Court stated clearly that since matters in primary courts are prosecuted by parties themselves, where either party is dissatisfied, if it is the accused, then he is supposed to join the complainant; if the accused is acquitted, the DPP can appeal on behalf of the complainant to the district court. Thereafter it is the DPP who shall proceed to appeal to the High Court, if so wishes. In the premises he faulted the appeals by the appellant at both appellate stages for suing the Republic without joining the complainant.

Referring further to the Court of Appeal decision he submitted that while it referred to **section 34 (1) (b) of the Magistrates' Courts Act, Cap 11 R.E.**

**2019**, it ruled that the DPP has to be notified so as to form part of the case by also issuing notice to the court. Mr. Mgaya contended that all these procedures were not adhered to by the appellant rendering the matter defective. He thus prayed for the appeal at hand to be struck out and the district court decision to be quashed and the appellant to be directed to file his appeal against the decision of the primary court in accordance with the law by joining the complainant.

On his part, the appellant argued that he has spent a long time in jail. He prayed for the court to consider that and decide his case.

After considering the arguments by the parties and gone through the lower courts' record I agree with Mr. Mgaya that the complainant in the primary court was one Amon Godfrey Mwalukasa. However, on appeal to the district court and to this Court, the appellant appealed against the Republic leaving out the complainant, Amon Godfrey Mwalukasa. In fact, I find that there is no dispute as to the fact that the matter emanated from Mwambani primary court and that the Republic came to be joined at the district court and further at the High Court without him issuing notice as to his wish to be heard in the matter.

**The Magistrates' Courts Act** guides the procedure for the Republic/DPP to be a party in a case of criminal nature in the district court or High Court, in a matter emanating from primary court. These are **section 20 (1) (a), (b)** and **section 25 (1) (a), (b)**, respectively. Specifically, the provisions permit the DPP to appeal against the decision of the primary court and the district court, if he so wishes, and not for the complainant to join him.

**Section 20 (1) (a) and (b)** specifically states:

*"20 (1) Save as hereinafter provided:*

- (a) In proceedings of criminal nature, any person convicted of an offence by a primary court, or where any person has been acquitted by a primary court, the complainant or the Director of Public Prosecution; or*
- (b) In any other proceedings, any party, if aggrieved by an order or decision of the primary court, may appeal therefrom to the district court of the district for which the primary court is established."*

**Section 25 (1) (a) and (b)** states:

*"25 (1) Save as hereinafter provided:*

- (a) In proceedings of criminal nature, any person convicted of an offence or, in any case where a district court confirms the acquittal of any person by a primary court or substitutes an acquittal for conviction, the complainant or the Director of Public Prosecution; or*
- (b) In any other proceedings any party, aggrieved by the decision or order of a district court in the exercise of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal therefrom to the High Court."*

The Court of Appeal in the case of **Simon Martin vs. Republic** (supra) cited by Mr. Mgaya, while reverting to its previous decision in the case of **Gaspari Simon Shutuhu and Another vs. The Republic**, Criminal Appeal No.

124 of 2017 (unreported) dealt with a similar issue and cemented on the above provisions under the Magistrates' Courts Act. With respect to the DPP joining as an appellant or respondent the Court ruled that the applicable provision is **section 34 (1) (b) of the Magistrates' Courts Act, Cap 11 R.E. 2019**, which states:

*"34 (1) Save where an appeal is summarily rejected by the High Court and subject to any rule of court relating to substituted service, a court to which an appeal lies under this part shall cause notice of the time and place at which the appeal will be heard to be given.*

*(b) in all proceedings of a criminal nature in the High Court, or in any such proceedings in the district court in which **he is an appellant or has served notice that he wishes to be heard,...**" [Emphasis added].*

In consideration of the above authorities, I agree with Mr. Mgaya that for the Republic/DPP to appear in the High Court on criminal matters originating from the primary court, the Republic either has to be the one appealing or must have served notice that he wishes to be heard. The record, in the matter at hand clearly shows that the Republic neither appealed nor furnished notice that he wishes to be heard.

Under the circumstances, the Republic was wrongly joined by the appellant from the appeal stage in the district court and further in this Court. The appellant ought to have sued Amon Godfrey Mwalukasa, the complainant in the primary court. The proceedings and judgment of the district court are therefore found to be a nullity and are hereby quashed.

In the situation, this appeal is as well untenable before this Court and hereby struck out. The appellant is advised to file a fresh appeal against the complainant, Amon Godfrey Mwalukasa, in the district court, if he so wishes, and subject to time limitation.

Dated at Mbeya on this 28<sup>th</sup> day of June 2022.

  
**L. M. MONGELLA**  
**JUDGE**

**Court:** Ruling delivered at Mbeya in Chambers on this 28<sup>th</sup> day of June 2022 in the presence of the Appellant, appearing in person, and Ms. Zena James, learned State Attorney for the Respondent.

  
**L. M. MONGELLA**  
**JUDGE**

**Court:** Right of Appeal to the Court of Appeal has been duly explained.

  
**L. M. MONGELLA**  
**JUDGE**

**28/06/2022**

