

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(DISTRICT REGISTRY OF MOROGORO)**  
**AT MOROGORO**  
**CRIMINAL APPEAL NO. 23 OF 2022**

*(Originating from Malinyi District Court in Criminal case No. 17 of 2022)*

**ILINEY MOLASKUS .....1<sup>ST</sup> APPELLANT**

**JOACKIM CHARLES .....2<sup>ND</sup> APPELLANT**

**VERSUS**

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

**JUDGEMENT**

*Hearing date on: 04/7/2022*

*Judgement on: 06/7/2022*

**NGWEMBE, J:**

The two appellants were arraigned in the district court of Malinyi charged for Gang robbery contrary to section 285 (2) and 287 (C) of the Penal Code Cap 16 R.E. 2019. According to the particulars of the offence, the appellants were alleged to have committed gang robbery on 17<sup>th</sup> April, 2022 at Sofi Mission within Malinyi District in Morogoro region. That the gang robbery was committed against the Jackson Mkalula and did steal cash money of TZS. 210,000/= Laptop make HP valued TZS. 1,000,000/= and used actual violence by cutting the victim on his head with sharp object.

Upon hearing both parties, the trial magistrate found the appellants liable, hence convicted them and subsequently issued statutory sentence of thirty (30) years imprisonment and an order to pay compensation to the complainant TZS. 1,210,000/=.

Being aggrieved with such conviction and sentence, they preferred this appeal clothed with seven (7) grounds, that is, five grounds as per petition of appeal and two grounds as per notice to introduce and argue new grounds of appeal forming an aggregate of seven grounds of appeal. I need not to recap those grounds herein for the reasons to be disclosed later on.

On the hearing date of this appeal, the appellants procured legal services of Japhet Mmuru and Lawrence Mtanga learned advocates, while the Republic was represented by learned State Attorneys Edgar Bantulaki and Jamila Mziray. Much as I would recap on the length and exhaustive submissions of learned advocates for the appellants, yet the appealed judgement is not centered on the merits and demerits of the grounds of appeal, rather determines the validity of the charge sheet as was rightly argued by the learned State Attorney.


The learned State Attorney, supported the appeal based on only one ground that the charge was defective. That the particulars of the offence disclosed armed robbery instead of gang robbery. Added that such defect is not curable under section 388 of the Criminal Procedure Act. Supported his argument by referring this court to the case of **Hussein Ramadhan Vs. R, Criminal Appeal No. 118 of 2018**. Concluded that, a conviction and sentence based on a defective charge is null and void abinitio.

It is elementary knowledge of criminal law that, the cornerstone of any criminal case is the charge sheet. The charge sheet is both a heart and a brain of criminal justice and fair trial, which plays a duo role of informing the accused persons on the nature of their accusations and allow them to prepare their defense. Second, the charge sheet notifies the trial court on the subject matter with a view to determine its jurisdiction and prepare the procedure to be applied during trial. Therefore, the charge sheet is the most important document in any criminal trials.

Due to its importance, the Legislature in section 132 of the Criminal Procedure Act Cap 20 R.E. 2019, provided necessary prerequisites of a proper charge sheet. Some of them are; statement of specific offence or offences with which the accused person is charged; particulars of the offence as may be necessary to give reasonable information to the accused on to the nature of the offence charged. The section is quoted hereunder:-

Section 132. *"Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged".*

The catch words in this section is 'shall' contain a specific offence or offences and 'shall' provide particulars of the offence charged. Specific offence is found in the sections of the law providing the offence. If it is gang robbery to a specific section creating that offence must be cited.





**Likewise, a proper charge sheet should comply with section 135** of the Criminal Procedure Act Cap 20 R.E. 2019 as quoted hereunder:-

*"The following provisions of this section shall apply to all charges and information and, notwithstanding any rule of law or practice, a charge or an information shall, subject to the provisions of this Act, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this section: -*

*(i) A count of a charge or information shall commence with a statement of the offence charged, called the statement of the offence;*

*(ii) the statement of offence shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence and, if the offence charged is one created by enactment, shall contain a reference to the section of the enactment creating the offence;*

*(iii) after the statement of the offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary, save that where any rule of law limits the particulars of an offence which are required to be given in a charge or an information, nothing in this paragraph shall require any more particulars to be given than those so required".*



The two sections sets out three important responsibilities; one sets out the process of proper charging the accused, which is a fundamental duty of a prosecutor; two the accused must know exactly what he is for and start preparing his defense; and three, the trial court knows if it has jurisdiction and sets up procedures on how to handle that case from the beginning of trial to the end. Charge sheet lays out the whole foundation of criminal justice in any court of law. Therefore, failure to frame a proper charge sheet, according to the dictates of law, goes to the root of the matter and consequently ends up nullifying the whole process of justice.

The consequences of defective charge sheet do not last only to the court and accused persons, rather goes deeper to the society where the alleged crime was committed. If the accused committed such crime, his right is to be properly and heavy punished. The spirit of criminology and penology is to net all criminals in the society and rightly punish them. The punishment inflicted to the accused has triple purposes, one to change that unacceptable behavior of the accused in the society and second to give a lesson to others of similar behavior; third is to build confidence of the general public to their judiciary, that when an accused is arraigned in court, justice will be done and seen to be done. Doing otherwise, implies negative instinct to the judiciary. Thus, the prosecution has a noble duty to properly charge the accused and professionally prosecute that case.

Rightly so, the Court of Appeal in **Charles S/O Makapi Vs. R, criminal Appeal No 85 of 2012** categorically, held that, section 135 (1) of the CPA, imposes mandatory requirements that a charge sheet must



describe the offence and provide particulars of the offence and make reference to the applicable law.

In the same spirit, the Court of Appeal in **Criminal Appeal No. 202 of 2013 between Marekano Ramadhani Vs. R**, at page 7 held:-

*"Framing of charge should not be taken lightly, we think it is imperative for the prosecution to carefully frame up a charge in accordance with the law. It becomes even more vital to do so where an accused is faced with a grave offence attracting a long prison sentence".*

The corresponding remarks were echoed in Criminal **Appeal No. 153 of 1994** between **Oswald Mangula Vs. R** where the Court of Appeal held:-

*"We wish to remind the magistracy that it is salutary rule that no charge should be put to an accused before the magistrate is satisfied, inter alia, that it disclosed an offence known to law, it is intolerable that a person should be subjected to the rigors of trial based on charge which in law is no charge. The charge laid at the appellant's door having disclosed no offence known in law all the proceedings conducted in the District Court on the basis thereof were nullity since you cannot put something on nothing".*



In the **criminal Appeal No. 253 of 2013 between Abdallah Ally Vs. R**, the court observed:-



*"...being found guilty on a defective charge based on wrong and/or non-existent provisions of the law, it cannot be said that the appellant was fairly tried in the courts below ...In view of the foregoing shortcomings, it is evident that the appellant did not receive a fair trial in court. The wrongly and/or non-citation of the appropriate provisions of the penal code under which the charge was preferred, left the appellant unaware that he was facing a serious charge of rape..."*

The same wording was repeated in the case of **Musa Mwaikunda Vs. R [2006] T.L.R. 387**, therefore, failure to charge the accused properly renders the whole proceedings defective and incompetent. What is founded on a defective proceedings or incompetent case, even the appeal turns to be nugatory.

Having so said, the question remains, whether the charge sheet was such defective which rendered the whole trial unfair? The answer to it demand thorough consideration of the charge sheet itself. Undoubtedly, the statement of offence and citation of law was properly done as required by law. However, particulars of offence described armed robbery. For clarity the particulars is quoted hereunder:-

*"That Iliney S/O Molaskusi and Joackim S/O Charles are jointly and charged together on 17<sup>th</sup> day of April 2022 at Sofi mission within Malinyi District in Morogoro did steal cash*



*Tsh. 210,000/-, Laptop make HP Valued Tsh. 1,000,000/= the property of Jackson Mkalula and immediately before such stealing did use actual violence by cutting Jackson S/O Mkalula using sharp object on his head in order to obtain the said stolen properties"*

The contents of such particulars indicated purely; the offence of armed robbery as opposed to gang robbery. I therefore, fully subscribe to the learned State Attorney that the charge lacked particulars of gang robbery rather disclosed another offence which was not preferred against the appellant. As such, the appellants were not availed with fair trial, which resulted into a miscarriage of justice. Improper charge, renders the whole proceedings of a trial court a nullity, subsequently, an appeal based on nullity must likewise be nullified for no valid may come from nullity.

For the reasons so stated, and the referred precedents, this appeal is meritorious same is allowed. Consequently, I proceed to quash the conviction of both accused persons and set aside the sentence of 30 years' imprisonment and other ancillary orders meted by the trial court. Subsequently, order an immediate release of the appellants from prison, unless otherwise lawfully held.



**P.J. NGWEMBE**

**JUDGE**

**06/07/2022**



**Court:** Delivered at Morogoro in Chambers on this 6<sup>th</sup> day of July, 2022 in the presence of Kasilida Chimagi for Lawrence Mtanga Advocate for the Appellants and Elizabeth Malya State Attorney for the Respondent.

**Right to appeal to the Court of Appeal explained.**



A handwritten signature in blue ink, consisting of a large, stylized 'P' followed by a series of loops and a long horizontal stroke.

**P.J. NGWEMBE**

**JUDGE**

**06/07/2022**