

**IN THE HIGH COURT OF TANZANIA
(SHINYANGA DISTRICT REGISTRY)**

AT SHINYANGA

CRIMINAL APPEAL NO. 62 OF 2021

(Arising from Criminal Case No. 19 of 2021 Maswa District Court)

BENEDICTO MARTINE MBESA APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

Date of last order: 18/05/2022

Date of judgment: 15/06/2022

S.M. KULITA, J.

This is an appeal from Maswa District Court. The appellant herein, **BENEDICTO MARTINE MBESA** was convicted and sentenced to serve the imprisonment of 30 (thirty) years for Armed Robbery, contrary to section 287A of the Penal Code [Cap. 16 RE 2019] upon his plea of guilty to the charge. Aggrieved with both, conviction and sentence the appellant appealed to this court relying on the following 4 (four) grounds;

1. That, the trial court Magistrate erred in law and fact to sentence the Appellant who is a juvenile and first offender, the term of 30 (thirty) years imprisonment.
2. That, there is an error on face of the record that the proceedings are entitled the offence of Murder instead of Armed Robbery.
3. That, the plea was obtained through chicanery maneuver as the Appellant was threatened by the prosecution side when he was recaptured after he had allegedly to have escaped.
4. That, the Appellant was not recorded his statement at the Police Station upon his arrest as required by the laws.

During the submissions which were conducted orally, the Appellant appeared in person while the Respondent was represented by the Learned Counsel Gloria Ndoni, State Attorney.

Regarding the fact that among the contents in ground No. 1 of the Petition of Appeal is that the Appellant is a juvenile, before hearing the appeal this court ordered the Appellant's age to be ascertained by the Medical Doctor. Upon that being done and the report dated 31/03/2022 being submitted to this court. It was observed that the Appellant is aged between 16 – 17 years old. Both parties were

notified of the contents of the said report and supplied with the copies. From there the appeal started to be heard

In his submission the Appellant prayed for his grounds of appeal to be adopted as the submission for his appeal before this court. He prayed for the court to find him not guilty and acquit him forthwith.

In the reply thereto the State Attorney, Mr. Gloria Ndoni conceded with the appeal in general. Relying on ground No. 1 of the appeal, that the trial court Magistrate erred in law and fact to penalize the Appellant to a custodial sentence of 30 (thirty) years imprisonment while the said Appellant is a juvenile and a first offender, the Counsel conceded with it and stated further that the proceedings, judgment and sentence of the lower court are therefore nullity. She said that, as far as the report transpires that the Appellant's age is about 16 – 17 it means by 2021 when the crime was committed he was about 15 – 16 years old, the age that falls under the juvenile.

The State Attorney submitted that section 4(1) of the Child Act No. 21 of 2007 defines a child/juvenile as a person under the age of 18 (eighteen) years. She said that, as the Appellant was a juvenile, he was not supposed to be prosecuted in the District Court. The proper court was the Juvenile Court, as per section 98 of the Child Act No. 21 of 2007.

The Counsel added that the offence of Armed Robbery falls under the Minimum Sentence Act [Cap 90 RE 2019] but the trial court ought not to rely on it in sentencing the Appellant as the said law does not apply to the juvenile, the person under the age of 18.

The Counsel concluded that, as the whole proceedings and judgment are nullity, she prays for them to be quashed and the sentence be set aside. She further prayed for this court to order the Appellant to be prosecuted in a proper court.

From the above submissions and the Doctor's observation on the age of the Appellant, there is no dispute that the appellant was a juvenile while he was committing the offence. He was about 15 – 16 years. That being the case, as stated by the State Attorney that, according to section 98 of the Child Act No. 21 of 2007, the proper court for the Appellant to be prosecuted was the Juvenile Court.

It is apparent seen in the lower court's proceedings that the Appellant has been sentenced to serve the imprisonment of 30 years which is a minimum penalty for the convict of Armed Robbery. The said penalty is provided in the Minimum Sentence Act [Cap 90 RE 2002] at section 5(a)(ii). However, the said Act at section 2 provides that it does not apply to the juveniles.

Furthermore, the same Act defines "Juvenile" as a person under the apparent age of 18 years.

It therefore suffices to say that the District Court of Maswa had no jurisdiction to entertain the Criminal Case No. 19 of 2021. That being the case the whole proceedings and judgment of that court in respect of this matter are hereby quashed and the sentence of 30 (thirty) years imposed against the Appellant herein is hereby set aside.

Those findings are sufficient to dispose of this matter. I therefore find it unnecessary to deal with the other grounds of appeal.

In upshot the appeal is partly allowed. The appellant is discharged on condition that the prosecution is at liberty to try him in the court with competent jurisdiction, which is the Juvenile Court.



A handwritten signature in blue ink, appearing to be "S.M. Kulita".

S.M. KULITA

JUDGE

15/06/2022

