

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 253 OF 2021

OBADIA FREDRICK NTABWA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

***(Appeal from the decision of the District Court of Bagamoyo at Bagamoyo
in Criminal Case No. 257 of 2020)***

RULING

26th and 30th August, 2022

KISANYA, J.:

This is an appeal against the judgment of the District Court of Bagamoyo at Bagamoyo in Criminal Case No. 257 of 2020 in which Obadia Fredrick Ntabwa, the appellant herein was convicted and sentenced to thirty years imprisonment for an offence of rape preferred under sections 130 (1) (2) (c) and 131 (1) of the Penal Code, Cap 16 R.E.2019 (now R.E. 2022).

It was alleged by the prosecution that, on 23rd day of August, 2020 at 17:30 hours at Makurunge area within Bagamoyo District in Coast Region, the appellant had carnal knowledge of one FG (named withheld to conceal her identity), a girl aged 11 years.

To establish its case, the prosecution called seven witnesses: the victim/FG (PW1), Rehema Fulgence (PW2), Mwajuma Thabiti (PW3), Esther

Fulgence (PW4), Husna Daudi (PW5), WP 5672 Corporal Maria (PW6) and Ally Shaban Ponza (PW7). In addition to the oral testimonies of the said witnesses, the prosecution tendered the report for medical examination (PF3) which was admitted as Exhibit P1. On the part of the appellant, he gave his evidence on oath and tendered no documentary evidence. At the conclusion of the case for the prosecution and the defence, the learned trial magistrate found the appellant guilty of the charged offence. Accordingly, the appellant was convicted and sentenced as hinted earlier.

Unamused, the appellant has filed the present appeal against the decision of the trial court on six grounds of appeal. For the reasons to be apparent in this ruling, I find it not necessary to reproduce the grounds of appeal.

The appeal was heard by way of written submissions. Both parties submitted their respective argument on each ground of appeal. As I was composing the judgment, I noticed that the judgment subject to this appeal were not signed by the trial magistrate. That being the case, both parties were recalled to address the court on the said anomaly.

The appellant had nothing substantial on the issue raised by the Court. He just submitted that he believes that the Court will render justice. On the other hand, Ms Hellen Moshi, learned Senior State Attorney who appeared for the respondent conceded that the judgment was not signed. She

contended that the judgment indicates that it is a certified copy of the original while there is no original copy signed by the learned trial magistrate. It, was therefore, her considered submission that the trial court did not pass a decision which could give rise to this appeal. That said, Ms. Moshi moved me to remit the case filed to the trial court and direct the trial magistrate to compose a judgment in accordance with the law.

The appellant vehemently contested the prayer made by the learned Senior State Attorney on the account that he had stayed in prison for a long time. In lieu thereof, he prayed this Court to discharge him on the ground that he did not contribute to the said anomaly.

After consideration of the submissions made by the appellant and the learned Senior State Attorney, it is common ground that this appeal is premised on the conviction and sentence meted on the appellant by the trial court. It is clear that the point for determination is whether there is a judgment passed by the trial court for the instant appeal to arise.

This issue is governed under section 312 (1) and (2) of the Criminal Procedure Act, Cap. 20, R.E. 2022 (the CPA) which provides for the contents of a valid judgment. In terms of the said provision, a valid judgment must be dated and signed by the presiding officer. It stipulates as follows:-

"312.-(1) Every judgment under the provisions of section 311 shall, except as otherwise expressly provided by this Act, be written by or reduced to writing under the

*personal direction and superintendence of the presiding judge or magistrate in the language of the court and shall contain the point or points for determination, the decision thereon and the reasons for the decision, **and shall be dated and signed by the presiding officer** as of the date on which it is pronounced in open court.*

*(2) In the case of conviction the **judgment shall specify** the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted and **the punishment** to which he is sentenced.”(Emphasize supplied)*

As it can be glanced from the above cited provision, sentence is also part of the judgment. Now, considering that the said provision is couched in mandatory terms, a judgment and/or sentence which is not signed by the trial magistrate or judge is not a judgment. As a result, no appeal can lie against unsigned judgment. I am guided by the case of **Patrick Boniphace vs R**, Criminal Appeal No. 2/2017 (unreported) in which the Court of Appeal had this to say on the judgment which was not signed: -

“In the matter at hand, since the judgment of the trial court was not signed and dated by the trial magistrate who conducted the trial, there was no judgment to be appealed against before the High Court.”

I am aware that after introduction of information and communication technology, the trial magistrate or judge may type his or her judgment and deliver the same to the parties. However, the requirement to sign the judgment must be complied with after printing the judgment. If that is not

done, it is hard to tell whether the said judgment was issued by the magistrate or judge named in the judgment, ruling or order.

As rightly observed by Ms. Moshi, the learned trial magistrate did not sign the judgment and sentence. In terms of the record, there is no handwritten judgment. Therefore, the typed judgment ought to have been signed by the learned trial magistrate. Since this was not done, the certified copy of original cannot be branded as a judgment of the trial court. Being guided by the foresaid position, I hold the view that the judgment of the District Court of Bagamoyo at Bagamoyo in Criminal Case No. 257 of 2020 is not a judgment for want of signature of the trial magistrate. In consequence, the appeal is incompetent for want of decision.

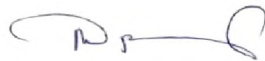
For the reasons I have endeavored to state I find no need of considering the appeal on merit. In lieu thereof, the appeal is hereby struck out. I also engage section 373 of the CPA and nullify the judgment alleged to have been passed by the trial court and set aside the sentence meted on the appellant.

On the way forward, I remit the case file to the District Court of Bagamoyo and direct the learned trial magistrate (Mbafu, B.E., RM) to compose, sign and deliver the judgment in accordance with the law. If for any reason the said magistrate will not be available, it is directed that

another magistrate with jurisdiction be assigned to take over the matter. In the meantime, the appellant shall remain in prison. In the event he is convicted, the trial magistrate is ordered to deduct the time spent in prison by the appellant from the sentence to be imposed.

It is so ordered.

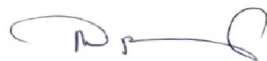
DATED at DAR ES SALAAM this 30th day of August, 2022.



E.S. Kisanya
JUDGE

Court: Judgment delivered this 30th day of August, 2022 in the presence of the appellant in person, Mr. Emmanuel Maleko, learned Senior State Attorney for the respondent and Ms. Bahati, Court Clerk.

Right of Appeal explained.



S.E. Kisanya
JUDGE
30/08/2022

