

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA
CRIMINAL APPEAL No. 25 OF 2021

(Arising from the District Court of Ngara at Ngara in Criminal Case No. 126 of 2020)

KEFA GEORGE----- APPELLANT

Versus

THE REPUBLIC----- RESPONDENT

JUDGMENT

Date of Judgment: 23. 09.2022

A.Y. Mwenda, J.:

Before the District Court of Ngara at Ngara the appellant was arraigned for cultivation of prohibited plants contrary to section 11(1) (a) of the Drugs Control and Enforcement Act [CAP 95 R.E 2019]. The particulars of the offence are to the effect that on 23rd day of October 2019, during night hours at Ruzanze Village within Ngara District in Kagera Region he was found in unlawful cultivation of Narcotic Drugs, to wit 32 plants of Cannabis Sativa (Bhangiri).

To prove its case, the prosecution's side called eight (8) witness and tendered seven exhibits. In an attempt to prove his innocence, the appellant called two witnesses, one of them being himself. Having analysed both the prosecution's and defence evidence, the Hon. trial Senior Resident Magistrate was satisfied that the prosecution's side discharged its duty of proving its case.

He therefore convicted the appellant for unlawful cultivation of bhang plants. In sentencing the appellant, the Hon. trial Senior Magistrate used the following words and I quote;

"The convict is hereby sentenced under section 11(1) (a) of the Drug Control and Enforcement Act, No. 5 of 2015 (now R.E 2019) to serve imprisonment in jail for a term not less than 30 years from today"

Aggrieved by the conviction meted against him, the appellant preferred the present appeal with three grounds. For reasons which I shall explain later I found it pertinent not to reproduce the said grounds.

On the hearing date of the appeal, the appellant joined the court via virtual link from Bangwe Prison, in Kigoma. For the respondent, the Republic, Mr. Amani Kyando, learned State Attorney was in attendance.

Before hearing commenced, the court Suo Motu detected an anomaly in respect of the sentence passed by the court.

Parties were thus called upon on top of addressing the court on the grounds of appeal, to also submit in respect of legality of the sentence passed by the Hon. trial Senior Resident Magistrate.

When invited to submit in support to his grounds of appeal, the appellant informed the court that he has nothing to add to what he stated in the grounds of appeal.

While resisting the present appeal Mr. Amani submitted that the prosecution side discharged its duty of proving its case to the standard required, that is beyond reasonable doubt. He said, that duty was discharged through evidence which revealed the appellant was the owner of the farm in which the illicit plants were cultivated and that his confessions before the police and the justice of peace cemented that fact.

In regard to legality of the sentence passed by the Hon. Trial, Senior Resident Magistrate Mr. Amani submitted that by itself the sentence passed is as good as no sentence at all. He thus prayed this court to vary the same and substitute it with a proper sentence which can be executed.

I have thoroughly gone through the records and the relevant law. As I have stated earlier, I noticed the judgment and the sentence of the trial Senior Resident Magistrate with some anomalies which may render it invalid.

In the copy of the judgment, there is no sentence pronounced by the court. Rather the same is recorded in the copy of the typed proceedings.

It is trite law that the judgment shall contain conviction and sentence. This position is stated under section 312 (1) of the Criminal Procedure Act. This section reads, that;

*"S.312 (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"

The principle herein above has been discussed many times by the courts. In the case of HUSSEIN IDDI MSUYA VS THE REPUBLIC, CRIMINAL APPEAL NO. 10 OF 2021, this court, (Ngwembe,J.), held inter alia that;

"In criminal trials, the end result is either acquittal or conviction. In case the accused is convicted, the trial court has uncompromised duty to pronounce conviction and subsequent sentence. Failure to convict the accused based on the charging section is fatal. Also, failure to pronounce sentence as required by the law is equally fatal contrary to section 312 (2) of Criminal Procedure Act."

From the foregoing authority, failure by Hon. Senior Resident Magistrate to pronounce the sentence in the copy of judgment is fatal which renders the said judgment incompetent.

Again, apart from failure by the Hon. Senior Resident Magistrate to pronounce the sentence in the copy of judgment, and instead doing so, in the copy of proceeding, by looking at it, it is clear that the same is as good as no sentence at all. As I stated at the introductory part, the Hon. Senior Resident Magistrate sentenced the appellant to serve not less than 30 years jail imprisonment. With

this kind of sentence, it is clear that it is not executable as the appellant might find himself staying in jail forever.

It is important to note here that the sentence of 30 years under section 11 (1) (a) of the Drug Control and Enforcement Act, [CAP 95 R.E 2019] is a minimum sentence. In the said circumstances the Hon Senior Resident Magistrate ought to have specifically stated the jail term under which the appellant should spend. Failure to do so is fatal. In the case of HUSSEIN IDDI MSUYA VS REPUBLIC (SUPRA) the court said, that;

"Therefore, I have observed several times, the court verdict is most pernicious part to the loser or accused person. Therefore, failure to pronounce sentence is fatal..."

In the present appeal therefore, since the whole judgment lacks sentences and the sentence in the proceedings is not specific, then the said judgment is incompetent.

Regarding the consequences, in the case of HUSSEIN IDDI MSUYA (SUPRA) the court held that;

"The consequences of failure to have a competent judgment goes beyond the appeal itself. For instance, if the court's judgment is incompetent, it means the

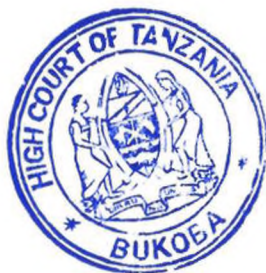
*appeal itself is likewise incompetent. Consequently,
before this court there is no competent appeal."*


In the same vein, this present appeal is incompetent. I therefore remit the file back to the trial court for it to enable Hon. Senior Resident Magistrate to compose and deliver a judgment which is in conformity with the law in that it has to have a proper conviction followed by sentence which shall specifically describe the term under which the appellant shall spend in jail.

Where it appears that the trial magistrate has ceased jurisdiction for one reason or another, in term of section 214 (1) of the Criminal Procedure Act [CAP 20 R.E 2019], another Magistrate should be assigned the case to compose and deliver the judgment.

I also order that the conviction and sentence based on the charge to be ordered by the magistrate take into account the time the appellant has spent in prison. After the new judgment, the appellant shall be at liberty to start afresh the process of appeal.

It is so ordered.





A.Y. Mwenda
Judge
23.09.2022

Judgment delivered in chamber under the seal of this court in the presence of Mr. Kefa George the Appellant via virtual link from Bangwe Prison in Kigoma

and in the presence of Mr. Kanisius Ndunguru, learned State Attorney for the Respondent.




A.Y. Mwenda

Judge

23.09.2022