

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB DISTRICT REGISTRY)
AT DAR ES SALAAM
CRIMINAL APPEAL NO. 107 OF 2021

(Originating from the District Court Kinondoni in Criminal Case No.20 of 2020 before
Jacob, RM)

HASSAN NURDIN.....APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

Date of Last Order: 22nd August, 2022

Date of Judgment: 16th September, 2022

E.E.KAKOLAKI,J.:

The appellant herein was arraigned before Kinondoni District Court at Kinondoni with one offence of Armed Robbery; Contrary to section 287A of the Penal Code, [CAP 16 R.E. 2002] as amended by Act no. 3 of 2011. It was prosecution case before the trial court that, on 25th day of October, 2019 at Bunju 'A' area within Kinondoni District in Dar es salaam Region, the appellant did steal cash money Tshs.750,000/=, hand bag valued at Tshs.60,000/=two flash disk valued at Tshs.20,000/= earphone valued at Tshs.6000/=,make up set valued at Tshs.20,000/=, perfume valued at Tshs.12,000/=total valued at Tshs.1,159,000/= the properties of Nyanzobe Hassan and immediately before such stealing did cut her with machete on

her right arm in order to obtain and retain the said properties. The charge having placed before him and denied, a full trial was conducted and at the end the trial court was convinced that, the prosecution had made out their case beyond reasonable doubt against the appellant and proceeded to convict him as charged and sentenced him to serve a thirty (30) years imprisonment. Discontented with both conviction and sentence, the appellant preferred this appeal equipped with twelve grounds which the purpose this ruling and the reasons to be disclosed soon I find it irrelevant to reproduce them.

When the appeal was called for hearing upon leave sought it was agreed to proceed by way written submission and both parties filed their respective submission in accordance with the scheduled filing orders. The appellant proceeded unrepresented while the respondent enjoyed the services of Mr. Alodf Kisima, learned State Attorney.

As the Court was in the preparation of composing the judgment noted that, there was material defect in the contents of the impugned judgment which was not addressed by parties, hence raised the issue suo motu and invited the parties on 16/09/2022, to address it on the same. The Court was so prompted in the course of discharging its duty as superior court in ensuring

that, courts subordinate to it are properly applying and abiding by the laws. Expressing this noble duty the Court of Appeal in the case of **Marwa Mahende Vs. Republic** [1998] T.L.R. 249, had this to say:-

*"We think . . . the duty of the Court is to apply and interpret the laws of the country. **The superior courts have the additional duty of ensuring proper application of the laws by the courts below**" [The emphasis is mine]*

Similar observation was aired in the case of **Adelina Koku Anifa & Another Vs. Byarugaba Alex**, Civil Appeal No. 46 of 2019 (CAT-unreported) where the Court of Appeal had this to comment to make:

*It is certain therefore, that where the lower court may have not observed the demands of any particular provision of law in a case, **the Court cannot justifiably close its eyes on such glaring illegality because it has duty to ensure proper application of the laws by the subordinate courts and/or tribunals.** (Emphasis supplied)*

In the present matter, the issue which parties were called to address the Court is whether the judgment lacking points for determination contravenes the law. Both parties responded in affirmative submitting that, it does as a judgment without points for determination is not a judgment at all for contravening the provisions of section 312(1) of the Criminal Procedure Act,

[Cap. 20 R.E 2022](the CPA). It is true and I agree with both parties that, under the provisions of section 312(1) of the CPA, a sound judgment must contain among other contents ***point or points for determination, the decision thereon and the reasons for the decision.*** Section 312(1) of the CPA, provides:

*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. (Emphasis supplied)*

This Court and Court of Appeal has in several occasions insisted on what should be contained in a sound judgment. In the case of **Yusuph Abdallah Ally Vs. DPP**, Criminal Appeal No. 300 of 2009 (CAT unreported), when the Court of Appeal had an opportunity to describe the contents of judgment, had this observation to make:

*"It is settled law that a judgment should contain inter alia, **the point or points for determination**; the decision thereon and the reasons for such a decision."* (Emphasis supplied)

The above pointed contents of the judgment no doubt applies on both criminal and civil cases. I am alive to the fact that, every Magistrate or Judge has his own style of composing judgments. However, in so doing must make sure that the essential or mandatory ingredients of the judgment are there. Glancing at the impugned judgment of the District Court of Kinondoni in Criminal Case No. 20 of 2020, I am left with no doubt that, the same infringed the mandatory provisions of the law as ascribed in section 312(1) of the CPA, for not containing the points for determination of the matters in dispute. I hold that view as the learned trial magistrate having cited the provision of section 287A of the Penal Code, [Cap. 16 R.E 2019] now R.E 2022 providing for the offence of Armed Robbery, listed down the ingredients of the offence before he went on to consider them as issues. For easy of reference, I quote the excerpt from page 3 of the judgment reading thus:

"From the above provision, it goes without saying that, for the accused on this case to be convicted for armed robbery, the prosecution has to prove beyond reasonable doubt each of the following ingredients:

- 1. That, the complainant's properties as referred above were stolen.*
- 2. That, immediately before or after stealing, the culprits were armed with a dangerous or offensive weapon or instrument to any person to retain the stolen properties, and*
- 3. That, the accused was the culprit who committed the said offence.*

For convenience purposes, the first and second issues will be determined conjointly. At the outset, having deliberated on the evidence from both sides at length, I am satisfied that the answer to both issues have been answered in the affirmative."

It is noted from the above cited excerpt that, the trial court omitted to frame issues so as to guide the Court for determination of both parties dispute as to whether the charge facing the appellant was proved to the hilt against him by the prosecution, instead turned the ingredients of offence into issues or points for determination, omission which in my firm view is fatal, thus rendering the said judgment equal to no decision at all.

The above being the position, this Court is enjoined to quash and set aside the judgment of the District Court of Kinondoni in Criminal Case No. 20 of 2020, which order I hereby issue and in lieu of order that, the case file be

remitted to the trial court for composing the judgment afresh in accordance with the law, before another competent magistrate. The appeal is allowed to that extent.

It is so ordered.

DATED at Dar es Salaam this 16th day of September 2022.



E. E. KAKOLAKI

JUDGE

16/09/2022.

The judgment has been delivered at Dar es Salaam today 16th day of September, 2022 in the presence of the appellant in person, Mr., State Attorney for the respondent and Ms. Monica Msuya, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

16/09/2022.

