

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**MISC. CRIMINAL REVISION NO. 4 OF 2022**

(Originating from Criminal Confirmation No. 3 of 2021 at Kondoa)

**JIDA RASHID**

**VERSUS**

**SAIDI HASSANI**

*2/9/2022*

**RULING**

**MASAJU, J**

Saidi Hassani and Saida Shabani were prosecuted jointly and severally by Jida Rashidi, in the Kondoa Urban Primary Court at Kondoa for the offences, 1<sup>st</sup> offence House breaking contrary to section 294 of the Penal Code [Cap 16], Theft contrary to section 265 of the Penal Code [Cap 16] and receiving property stolen or unlawfully obtained contrary to section 311 of the Penal Code [Cap 16]. Saidi Hassani (1<sup>st</sup> accused) was found guilty and convicted of the 1<sup>st</sup> and 2<sup>nd</sup> offences. He was sentenced to three (3) years imprisonment for the 1<sup>st</sup> offence and six (6) months imprisonment for the 2<sup>nd</sup> offence. The sentences were to run concurrently and subject to confirmation by the District Court of Kondoa.

The District Court of Kondoa at Kondoa confirmed the sentences and ordered the sentences to run consecutively, hence the "*suo motto*" revision by the Court pursuant to section 372 (1) of the Criminal Procedure Act [Cap 20].

Indeed, Section 294 (b) of the Penal Code, [Cap 16] provides that a person who is found guilty of Housebreaking is liable to imprisonment for 14 years. Also, section 265 of the Penal Code, [Cap 16] provides that a person who is found guilty of Theft is liable to imprisonment for 7 years, however, the two offences are not among the sentences which are regulated by section 4 of the Minimum Sentences Act, [Cap 90]. Hence, the trial court has the discretion and wisdom in deciding the sentences to impose thereof provided that the sentence should be within the jurisdiction and power of the trial court, in the instant case the Primary Court.

Rule 2(1) of the Primary Courts Criminal Procedure Code, The Third Schedule to the Magistrates Courts Act, [Cap 11 RE 2019] provides for the sentencing powers of the Primary Courts to be a term not exceeding twelve (12) months. Rule 7 (1) of the primary Courts Criminal Procedure Code provides for confirmation of the sentence of imprisonment for a term exceeding six months passed by the Primary Court. That, such a sentence has to be confirmed by the District Court.

In the instant case the 1<sup>st</sup> offence is not found in section 4 of the Minimum Sentences Act, [Cap 90] hence the Primary Court exceeded her sentencing powers contrary to Rule 2(1) of the Primary Courts Criminal Procedure Code. Therefore, the illegal sentence ought not to have been confirmed by the District Court but rather revised under section 22 of the Magistrates' Courts Act, [Cap 11 RE 2019]. The sentence of six (6) months imprisonment for the 2<sup>nd</sup> offence was within the powers of the primary Court so it was not subject to confirmation.

The District Court's mandate was to confirm sentence passed by the trial court which exceeds six (6) months imprisonment but does not exceed

twelve (12) months imprisonment. This is in accordance with Rule 2(1) read together with Rule 7(1) of the Primary Courts Criminal Procedure Code.

That said, the District Court wrongly confirmed the illegal sentence for the 1<sup>st</sup> offence. The trial court could have committed the offender to the District for sentencing under Rule 3 of the Primary Courts Criminal Procedure Code if it had the opinion that such greater punishment should be imposed. There was also no ground for the said confirmed sentences to run consecutively. By virtue of the Revisionary Powers vested to the Court by section 372 (1) of The Criminal Procedure Act, [Cap 20] the Court hereby nullifies, quashes and sets aside the sentence of 3 years imprisonment for the 1<sup>st</sup> offence for want of legality. And *in lieu* thereof the sentence of twelve months imprisonment is hereby imposed against the offender accordingly.

  
GEORGE M. MASAJU

**JUDGE**

2/9/2022

