

**IN THE HIGH COURT OF TANZANIA**

**(DISTRICT REGISTRY OF MTWARA)**

**AT MTWARA**

**CRIMINAL APPEAL NO. 34 of 2022**

*(Originating from Criminal Case No 128 of 2020 Ruangwa District Court at Ruangwa)*

**MUSSA JUMA MMASAI.....APPELLANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

**JUDGMENT**

**Muruke, J.**

Mussa Juma Mmasai, was on 25<sup>th</sup> day of October accused of having canal knowledge to a boy child aged 3 years. According to PW1 the mother resident of Namichiga village, she left her son to his stepfather (the appellant) and went to ceremony at her brother house. At around 21:00 hours, appellant went to the ceremony to inform PW1, that the victim is bleeding from her anus. PW1 went straight home and witnessed what was told by the appellant. Upon asking her son, (the victim) as to what happened, victim replied by pointing to the appellant while crying that it is the appellant who has caused that episode. After necessary step taken to village leaders, to police then to the hospital, appellant was arrested, charged with one count of unnatural offence contrary to section 154 (1) (a) (2) of the Penal Code Cap 16 R.E 2019. Upon prosecution proving the charged, he was thus sentenced for life imprisonment.



Being dissatisfied he has filed present appeal, after seeking extension of time raising four (4) grounds articulated in the petition of appeal. On the date set for hearing Ms. Aclara Blanket, represented appellant while Florence Mbamba learned State Attorney represented respondent. Appellant counsel pointed out, anomalies found in the court records, that vitiate proceedings namely,

One, charge sheet, was not read at the hearing of the case for the accused to plead. Two, failure by trial court to contrary with section 127 (2) (6) of the TEA Cap 6 R.E 2002. Three, appellant, then accused was not given chance to cross examine PW6 who tendered exhibit P2 caution statement. Four, Exhibit P1 and P2, were not read after being admitted.

Responding to the anomalies pointed out by appellant counsel learned State Attorney admitted all four of them as itemized above. She insisted that trial was a nullity, thus conviction and sentence cannot stand, thus, moved court to quash conviction, set aside sentence and order re – trial.

Indeed, trial court proceeds are nullity, by failure to read the charge sheet. It is settled principal of law that charge sheet is the foundation of the case, it is a frame in which a door can be fixed. Charge sheet is an accusation that need to be read loudly for the accused to know and understand the nature of the offence for him to be able to mount defense. If not read in court as seen in the trial court proceedings, what then prosecution witnesses were proving? More so, what accused now appellant was defend himself? That point alone disposes this appeal. Trial court proceedings in Criminal Case number 128/2020 were nullify, thus a quashed, conviction quashed, sentenced set aside, case to start a fresh,



appellant to remain in custody until conclusion of his case at the trial court. Trial court file to be remitted back for further action. Trial to commence within two (2) months from the date of this Judgment.



  
**Z. G. Muruke**

**Judge**

**25/11/2022**

Judgment delivered today in the presence of Enosh Kigoryo State Attorney for the respondent and Issa Chiputula for the appellant.



  
**Z. G. Muruke**

**Judge**

**25/11/2022**