

**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. 105 OF 2022

ELISHA ISDORI KINDOLE @JIBABA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the decision of the District Court of Ilala at Kinyerezi in
Criminal Case No. 412 of 2021)**

JUDGMENT

17th October and 5 & 6th December, 2022

KISANYA, J.:

At the District Court of Ilala at Kinyerezi, the appellant, Elisha Isdori Kindole @ Jibaba was charged with the offence of armed robbery contrary to section 287A of the Penal code Cap 16 R.E 2002 (now R.E 2019). It was the prosecution case that, on 25th November, 2020 at Tabata Shule area within Ilala District in Dar es Salaam Region, the appellant did steal a motor vehicle with registration number MC 336 CKQ, maker boxer, the property of one Mwanaisha Said Gereza and that immediately before and after such stealing, he threatened one James Magnus Lupendo with a knife in order to obtain and retain the motor vehicle.

The trial court conducted the hearing and the prosecution managed to convince the trial magistrate that it had proved its case beyond reasonable doubt. As a result, the trial court went on to convict the

appellant before sentencing him to serve a sentence of thirty years imprisonment.

Disgruntled by the trial court's conviction and sentence, the appellants filed the present appeal on ten grounds of appeal. However, I find no need of restating the grounds of appeal due to the reasons to be noticed in this judgment.

The appellant prayed that the appeal be argued by way of written submission and the respondent did not object to his prayer. The court order the appeal to be heard by way of written submission and the parties complied with the scheduled order.

In the course of composing the judgment, I wanted to satisfy myself on the competency of the appeal. That was after noticing that the judgement on record was not signed by the learned trial magistrate. At the hearing of that issue, the appellant appeared in person whereas the respondent was represented by Ms. Yasinta Peter, learned Senior State Attorney.

Responding to the foresaid issue, Ms Peter submitted that section 312 (1) of the CPA requires the judgment to be signed by the presiding officer. She went on submitting that the judgment subject to this appeal was not signed by the trial magistrate. That being the case, Ms. Peter was

of the view that the appeal is incompetent for want of judgment. She therefore, urged me to strike out the same and remit the case file to the trial court for composing the judgment in accordance with the law. On his part, the appellant was of the view that the judgment was signed by the trial magistrate.

Having considered the submissions made by the parties, I agree with the learned State Attorney the judgment of the court must comply with section 312(1) and (2) of the CPA. The section reads:

*"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."

The above cited provision is couched on mandatory terms. This implies that the judgment must, among others, be signed by the presiding magistrate or judge. It is settled law that a judgment of the court which contravene section 312 of the CPA is not a judgment in law. I am fortified by the case of **Abubakar I.H. Kilongo and Another vs R**, Criminal Appeal No. 230 of 2021 (unreported) in which the Court of Appeal held that:

"In short, it should comply with the requirement stipulated by the law, in this case, section 312 (1) of the CPA. It follows that a judgment of the trial court which does not conform to the requirement of the provisions of section 312 (1) of the CPA is not a judgment in law and will often run the risk of being quashed."

In the case of **Patrick Boniphace vs R**, Criminal Appeal No. 2/2017 (unreported), the Court of Appeal was confronted with the judgment which was not signed by the trial magistrate. It went on to hold as follows:

"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."

In the instant appeal, the record has no handwritten judgment. What is the case filed, is a typed judgment which was not signed by the trial magistrate who conducted the trial. I have also gone through the copy of judgment appended to the petition of appeal. It was signed on the part which indicate that the judgment was delivered by the trial magistrate in the presence of the appellant and the prosecuting attorney. Although the names of the trial magistrate appear on conviction and sentence parts of the judgment, her signature was not appended on those parts. Considering that reading the judgment is different from signing the same, I am of the humble view that the judgment appended to the petition cannot lead us to conclude that the judgment subject to this appeal was signed.

Being guided by the foresaid position, the omission of the trial court magistrate to sign the judgment implies that there is no judgment passed by the trial court. In the result, this appeal is incompetent for want of a valid judgment. Thus, I find no need of addressing the grounds raised in the petition of appeal.

On the foregoing reasons, this appeal is hereby struck out. I employ the revisionary powers of this Court to nullify and quash the judgment, conviction and sentence meted upon the appellant. I further remit the

case file to the trial court and direct the trial magistrate to compose and/or sign the judgment in accordance with the law. During pendency of delivery of the fresh judgment by the trial court, the appellant will remain in custody. In the event the applicant is convicted by the trial court, the trial court is directed to deduct the time he spent in prison.

It is so ordered.

DATED at DAR ES SALAAM this 6th day of December, 2022.



S.E. KISANYA
JUDGE