

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF SUMBAWANGA**  
**AT SUMBAWANGA**  
**DC. CRIMINAL APPEAL NO. 14 OF 2021**

*(Originated from Criminal Case No. 58 of 2020 from District Court of  
Mpanda at MPanda)*

**JUMA S/O KWIMBA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*Date of last order: 26/11/2021*

*Date of Ruling: 01/04/2022*

**RULING**

**NDUNGURU, J.**

The District Court of Mpanda convicted and sentenced the (accused) appellant to serve thirty years imprisonment for each count of **rape c/s 130 (1) (2) (e) and 131 (1) and Section 60A(3) of the Education Act Cap 53 RE. 2002 or Amendment by Section 22 of the written Laws (Miscellaneous Amendment) (No2) Act 2016** and compensations of Tshs. 1, 00,000/= was awarded to the victim.

He was dissatisfied by the decision of the trial court and filed his appeal against conviction and sentence imposed by the trial court. The appellant filed the grounds of Appeal to this court.

- 1. That, the trial court erred in law and facts, when applying a wrong principle on the evaluation and assessment of the evidence which adduced by the parties, the trial court looking the evidence in isolation principle, despite of looking the evidence as the whole, looking the prosecution evidence first, then considering the defence evidence whether, casting doubt or rebating the prosecution evidence, such principle does not have a venue to the eyes of law.*
2. That, the trial court erred in law and facts. When fail to produce a chance to the appellant, to challenge the evidence which adduced by PW4 (Medical Officer). That failure of not granting a chance to the appellant, to challenge the evidence of PW4 (Medical Officer), creating a doubt, that the trial was not fairly conducted.
- 3. That, the trial court erred in law and facts, when fail to consider seriously the defence evidence the appellants.**

During the hearing appellant was unrepresented and the Republic was represented by Mr. Peres State Attorney. On 4<sup>th</sup> day of November 2021 when appeal came for hearing Mr. Peres State Attorney for Republic addressed the court that, there is a legal before we proceed, appellant was charged of two counts but conviction was entered for only one count of rape , the provision of **Section 235(1) of the Criminal Procedure Act** not complied with. The learned State Attorney went further that the irregularity made by the trial court can be cured by **Section 388 of the Criminal Procedure Act**. He prays the case file be taken back to the trial court to comply with **Section 235(1) of the Criminal Procedure Act**.

On the other hand, the appellant told the court that, he was acquitted in the 2<sup>nd</sup> count. He prays court to allow the appeal. Following the legal issue raised by Mr. Peres learned State Attorney the issue before the court is, the appellant was charged of the counts of rape and impregnating school girl, conviction and sentence was made one count ***whether irregularity is curable:***

As the law stands in this country once the person is charged before the court of law, the trial Magistrate prepared judgment and shall convicts or acquits the accused. In case of two or more counts conviction shall be

made for separate counts in the charge sheet. In the same way, sentences shall be imposed for each specific offence separately. **Section 235(1) of the Criminal Procedure Act Cap 20 RE 2019 Proved,**

In the case of **Haji Makame Shakila V. Republic Criminal Appeal. No. 308 of 2017 (CAT)** at Zanzibar) (Unreported) CAT had these words. [Per JUMA CJ]

- 1. The mandatory duty placed on subordinate trial court in Zanzibar to convict or acquit after hearing the evidence from the complainant, accused person and their witnesses be cleanly provided for by **Section 219 of the Zanzibar criminal Procedure Act No. 7 of 2004**, which the learned State Attorney attend for. This provision is "in para material" with **Section 235(1) of the Criminal Procedure Act Cap 20 of Tanzania [mainland]** which underscores the duty which the trial court have, to first convicts accused persons before imposing appropriate sentence*

2. Both **Section 235(1) of the Criminal Procedure Act [mainland]** and **Section 291 of the Criminal Procedure Act Cap of Zanzibar** have repeatedly been subject of strict interpretation on by the court, restating the trial Magistrate must first convict an accused who is found guilty of an offence before proceeding for sentence the accused. In **Jonathan Mlunguani V. Republic (CAT) Criminal Appeal No. 15 of 2011** (Unreported) the court recreated that... *failure on the part of the trial court to enter a conviction a fatal irregularity which renders both, the subsequent proceedings and the judgment of the 1<sup>st</sup> Appellate court defective*

**Order:** *Sentence entered by the trial court set aside. All proceeding before the High court of Zanzibar Declared nullity. The record remitted back to the Regional court for Zanzibar for the court to convict the appellant and imposed appropriate sentence, which shall take into account the period the appellant has for served."*

However, in case where there are more than one court in the charged sheet conviction or acquitted shall be entered for each court. In the case of **Nathanael Nkulikiye V. Republic [1952] TLR No. 129 HCT Mwanza**

**Order:** *The general principle is that on omnibus sentence is unlawful where of is undated to each conviction on each count. In other words for each conviction there must be imposed a separated sentence See the decision of the court in the case of **Binton Mwakipesile V. Republic (1905) EACA 40.**The position of this nature was also well stated in the case of **Alloyce Thomas alias mabelee V. Republic Criminal Appeal No. 8 of 2016 (CAT Arusha]** (Unreported) The central issue before the court was **noncompliance with S. 235(1)** of the Criminal Procedure Act Cap 20 RE 2019.*

**Held:** *Having conducted that of the Criminal Procedure Act was not complied with the next stipe has been quash the decision of the High Court set aside the sentences of thirty years imprisonment and to remit the record so the trial court in order to compose a proper judgment by entering a conviction in the two counts However, given the nature of the evidence on the record. Thus court not be the best route to take in order to meet the ends of justice.*

See the decision on the same position in the case of **Shabani Iddi Sololo & Another V. Republic Criminal Appeal No 210 of 2006 Amani Rungabikasi V. Republic Criminal Appeal No. 270 of 2008** and Abdala

**Ally. V. Republic Criminal Appeal No. 253 of 2013 (CAT All unreported).** All and All in the present Appeal noncompliance of **section 231 (1) for the Criminal Procedure Act** in the 2<sup>nd</sup> count make fatal irregularities, sentence imposed by the trial court set aside court record remitted back to the trial court to enter conviction and appropriate sentence. Ruling delivered under my hand and seal of this court in present of the appellant and Mr. Simon Peres S/A for the Republic today 4<sup>th</sup> day of March 2022.

It is so ordered.



*D. B. Ndunguru*

**D.B NDUNGURU**

**JUDGE**

**01/04/2022**