

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

AT BUKOKA

CRIMINAL APPEAL NO. 96 OF 2021

(Originating from Criminal Case No. 219 of 2019 at the District Court of Karagwe at Kayanga)

EMMANUEL NOVERTY @ MUDENDE----- APPELLANT

VERSUS

REPUBLIC----- RESPONDENT

JUDGEMENT

Date of Last Order: 23/02/2022

Date of Judgment: 04/03/2022

Hon. A. E. Mwipopo, J.

The appellant namely Juvenary Christian was charged and convicted by the Karagwe District Court at Kabanga for the offence of armed robbery contrary to section 287A of the Penal Code, Cap. 16, R.E. 2002. It was alleged on 27th June, 2019 at Nkwenda Village within Kyerwa District in Kagera region the appellant and two other persons jointly and together they did steal one motorcycle make SANYA with registration No. MC 636 CBD valued at Tshs. 2,500,000/= the property of Erick Rubalaza and at or immediately before or after such stealing did use actual violence in order to obtain or retain the stolen property.

When the charge was read over to the appellant he pleaded not guilty to the offence and the prosecution called 7 witnesses to prove their case. The Court did find that the appellant has a case to answer and the defence case was opened. The appellant testified on oath where he denied to commit offence and said that he was framed. The trial court then delivered its judgment on 12th May, 2020, where it did find that the prosecution proved the offence of robbery with violence. The Court convicted the appellant for the minor offence of robbery with violence and sentenced him to serve 20 years imprisonment.

The appellant was aggrieved by the decision of the trial Court and filed the present appeal. The appellant filed his petition of appeal which he amended and filed the amended petition of appeal on 13th December, 2021. In the amended petition of the appeal the appellant has raised five grounds of appeal as provided hereunder:-

1. *That, the charge sheet underlaid before the appellant was fatally defective for containing the following irregularities;*
 - a. *The owner of the property alleged to be stolen was named but the person whom the violence was done to him was not disclosed. This is contrary to section 135 (a) (iv) of the Criminal Procedure Act, Cap. 20, 2019, as it was retaliated in the case of Marwa Rose @ Masaba v. Republic, Criminal Appeal No. 220 of 2014 of the Court of Appeal of Tanzania at Mwanza.*

- b. The charge sheet did not disclose the time at which the offence of robbery happened. This is contrary to section 135 (f) of the Criminal Procedure Act, Cap. 20, R.E. 2019.*
- 2. That, the hon. trial magistrate erred in law and fact to convicting the appellant relying on his cautioned statement extracted from him by torture and in contravention of section 50 and 51 of the Criminal Procedure Act, Cap. 20, R.E. 2019, (Refer the case of Salum Said @ Kanduru v. Republic, Criminal Appeal No. 205 of 2010, Court of Appeal at Mtwara.*
 - 3. That, the justice of peace was not a faithful witness and his evidence was incredible and unreliable because he omitted to record demeanor of the client (appellant) who presented him with PF3 as to disclose the marks observed.*
 - 4. That, the evidence adduced by PW1 had a lot of doubts to such a way that he alleged that it was the appellant's cautioned statement which enabled the recovery of the motorcycle which he identified by registration number, colour, chassis number while PW4 – Inspector George stated that the motorcycle make SANYA was found abandoned with no registration number.*
 - 5. That, the Hon. Trial Court erred in law and fact to convict and sentence the appellant on insufficient evidence as the appellant was not found in possession of stolen good.*

At the hearing of the appeal, the appellant appeared in person unrepresented, whereas, the respondent was represented by Ms. Happyness Makungu, State Attorney.

The appellant being a layman prayed for the Court to consider all of his grounds of appeal as they are found in the amended Petition of Appeal.

In response, Ms. Happinness Makungu, SA, supported the appeal. Her reason for supporting the appeal is the appellant's first ground of appeal that the charge sheet was defective. She said that particulars of the charge sheet named the owner of the stolen property but it said nothing about the person whom the incident was committed to. The victim of the incident was never mentioned in particulars of the offence. In support of her argument, she cited the case of **Simeo Stephad @ Charembo v. Republic**, Criminal Appeal No. 384 of 2020, CAT at Bukoba, (unreported), where the court in page 12-13 of judgment found that the omission not to include in the particulars of the offence the name of the victim of the offence was fatally defective.

From submissions and the record of appeal, the Court is called upon to determine whether the present appeal has merits.

In determination of the appeal, I will commence with the first ground of the appeal that the charge sheet was fatally defective for failure to name a person to whom the violence was done during the incident. The respondent counsel admitted that the charge sheet was fatally defective for failure to name victim of the offence and for that reason she supported the appeal.

It is a statutory requirement for a charge to contain statement of the specific offence with which the accused is charged together with such particulars necessary for giving reasonable information as to the nature of the offence charged. This is provided under section 132 of the Criminal Procedure Act, Cap. 20, R.E. 2002 which reads as follows hereunder:-

"132. Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged."

From the above cited section, it is a mandatory requirement for a charge in court to contain statement of the specific offence with which the accused is charged and such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

It is settled that the particulars of the charge shall disclose the essential elements or ingredients of the offence. This was stated by the Court of Appeal in the case of **Leonard Mwanashoka v. Republic**, Criminal Appeal No. 226 OF 2014, Court of Appeal of Tanzania, at Bukoba, (Unreported), where it held that:-

"It is settled law that where the offence charged specifies factual circumstances without which the offence cannot be committed, they must be included in the particulars of the offence."

During trial, the prosecution has duty to prove that the accused committed the unlawful act of the offence charged with the necessary intention if required. In the same spirit, the particulars of the offence must disclose essential facts of the offence and any intent specifically required by law. The purpose is to give the accused person a fair trial by enabling him to prepare his defence. This was stated by the Court of Appeal in the case of **Isidori Patrice v. Republic**, Criminal Appeal No. 224 of 2007, Court of Appeal of Tanzania, at Arusha, (Unreported).

The appellant in the present case was charged for the offence of Armed Robbery contrary to section 287A of the Penal Code, (CAP 16, R.E. 2002. The particulars of the offence in the charge sheet reads:

" ***PARTICULARS OF OFFENCE***
Emmanuel S/O Novert@ Mudende on 27th June, 2019 at Nkwenda Village within Kyerwa District in Kagera region did steal one motorcycle make SANYA with registration No. MC 636 CBD valued at Tshs. 2,500,000/= property of one Erick S/O Rubalaza and at or immediately before or immediately after such stealing did use actual violence in order to obtain the stolen property. "

The above cited particulars of the offence does not disclose the actual violence used and the person to whom the actual violence was used in order to obtain the said motorcycle. The Court of Appeal in the case of **Kashima Mnadi v. Republic**, Criminal Appeal No. 78 of 2011, (Unreported), held that:-

"... Strictly speaking for a charge of any kind of robbery to be proper, it must contain or indicate actual personal violence or threat to a person targeted to be robbed. So, the particulars of the offence of robbery must not only contain the violence or threat but also on whom the actual violence or threat was directed."

In the present case, the particulars of the offence does not disclose the actual violence used to commit the offence and the person to whom the actual violence was used was not named. This has prejudiced the appellant since the particulars of the offence did not provide meaningful explanation of the ingredients of the offence to allow him to prepare his defence. The omission has rendered the charge fatally defective which could not be cured under section 388 of the Criminal Procedure Act. The same position was stated in the case of **Alex Medard v. Republic**, Criminal Appeal No. 571 of 2017, CAT at Bukoba (Unreported), where the Court of Appeal held that the defects in the charge sheet are not cured under section 388 of the Criminal Procedure Act. (See also. **Simeo Stephano @ Chaurembo v. Republic**, Criminal Appeal No. 384 of 2020, Court of Appeal of Tanzania at Bukoba).

The remedy where the appellant was convicted for the fatally defective charge is to quash the conviction and set aside the sentence as it was held in the case of **Mathayo Kingu v. Republic**, Criminal Appeal No. 589 of 2015, Court of Appeal of Tanzania, at Dododma, (Unreported); in **Jackson Venant v. Republic**,

Criminal Appeal No. 118 of 2018, Court of Appeal of Tanzania at Bukoba (Unreported); and in **Kassimu Mohamed Seleman v. Republic**, Criminal Appeal No. 157 of 2017, Court of Appeal of Tanzania at Mtwara, (Unreported).

Therefore, the appeal is found to have merits and I allow it. The conviction of the appellant by the trial District Court for the offence of robbery with violence is quashed and its sentence is set aside. I order for immediate release of the appellant from the prison otherwise lawfully held for another lawful cause. It is so ordered accordingly.




A.E. Mwipopo
Judge
04.03.2022

The Judgment was delivered today, this 04.03.2022 in chamber under the seal of this court in the presence of the Appellant and the counsel for the Respondent. Right of appeal explained.




A. E. Mwipopo
Judge
04.03.2022