

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
BUKOBA DISTRICT REGISTRY
AT BUKOBA**

CRIMINAL REVISION NO. 01 OF 2022

(Arising from Criminal Confirmation No. 11/2021 of Ngara District Court; Originating from Kabanga Primary Court in Criminal Case No. 105/2021)

BRIOGETH CHRIZANT.....APPLICANT

VERSUS

GODFREY GEORGE.....RESPONDENT

RULING

23rd March & 23rd March 2022

Kilekamajenga, J.

This court, on its own motion, revised the decision of Kabanga Primary Court in PC Criminal Case No. 105 of 2021. In this case the respondent, Godfrey George, was convicted and finally sentenced to serve three years in prison for the offence of wounding as per **section 228 (a) of the Penal Code, Cap. 16 RE 2019.**

The Primary Court, thereafter, referred the file to the District Court for confirmation. The District Court of Ngara, after going through the file, confirmed the sentence of three years imprisonment. This court, on its own motion, picked up this matter after one of the Judges visited the Ngara Prison. The court decided to revise this matter hence this brief ruling.

In this case, the main issue is whether the Primary Court has power to impose a prison sentence of three years. In addressing this point, there are few legal

issues worthy of determination. It should be understood that, the Primary Court has power to impose a prison term up to twelve months. For clarity and academic reasons, Ruling 2 (1) of the Primary Courts Criminal Procedure Code provides that:-

2.-(1) Subject to the provisions of any law for the time being in force, a court may, in the exercise of its criminal jurisdiction, in the cases in which such sentences are authorised by law, pass the following sentences-

(a) imprisonment for a term not exceeding twelve months;

(b) a fine not exceeding five hundred thousand shillings;

(c) corporal punishment not exceeding twelve strokes.

Provided that where a court convicts a person of an offence specified in any of the Schedules to the Minimum Sentences Act which it has jurisdiction to hear, it shall have the jurisdiction to pass the minimum sentence of imprisonment. (Emphasis added).

However, before the Primary Court imposes a maximum sentence of 12 months, Rule 7(1) must first be observed. For clarity and easy understanding, the Rule provides:-

7.-(1) Notwithstanding the foregoing provisions of this Part, no sentence or order of a primary court-

(a) of imprisonment for a term exceeding six months;

(b) of corporal punishment on an adult;

(c) of supervision of a habitual offender; or

*(d) of forfeiture in the exercise of its criminal jurisdiction, **shall be carried into effect unless it has been confirmed by the district court:***

*Provided that, **nothing in this subsection shall apply in any case where a person is convicted of an offence specified in any of the Schedules to the Minimum Sentences Act and sentenced to the minimum term of imprisonment provided for by that Act.***
(Emphasis added).

Therefore, what can be gleaned from the above provisions of the law is that, the Primary Court can only impose a sentence of a term of imprisonment of **not more than six months**. Where the sentence exceeds six months but not more than 12 months, such a sentence must be confirmed by the District Court. However, the above provisions of the law do not apply where the offender is convicted and sentenced for the offences specified in the Minimum Sentences Act which the Primary Court has jurisdiction. In other words, where the offender is sentenced under the Minimum Sentences Act, the Primary Court may impose a minimum sentence require which may be more than twelve months and confirmation by the District Court is not required.

On other cases where the Minimum Sentences Act does not apply, in case the Primary Court thinks that the offender deserves a higher sentence of more than 12 months, the Primary Court may convict the offender and thereafter refer the

file to the District Court for the sentence. This requirement is inline with Rule 3 of the Primary Courts Criminal Procedure Code which provides that:-

*'3. Where a primary court convicts an adult of an offence and, on obtaining information as to the character and antecedents of such adult or as to the circumstances or prevalence of the offence, the court is of the opinion that they are such that greater punishment should be imposed for the offence than the court has power to impose the court may, instead of dealing with him in any other manner, **commit the offender in custody to the district court for sentence.**'*

For instance, in the case at hand, the respondent was arraigned before the Primary Court for the offence of wounding. Contrary to **Section 228 (a) the Penal Code**. The section that creates the offence of wounding is couched that:

228. Any person who-

(a) unlawfully wounds another; or

(b) unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, or taken by any person, is guilty of an offence and liable to imprisonment for three years.

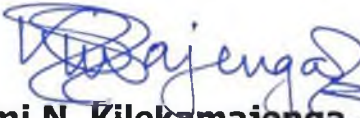
Under the above provision of the law, the maximum sentence for the offence of wounding is imprisonment for the term of three years. Therefore, the Primary Court had no power to impose such a sentence. If the Primary Court was of the view that the offender deserved such a higher sentence, the magistrate was

supposed to convict the respondent and then refer the file to District Court for passing the sentence. In alternative, the Primary Court could have referred the case to the responsible authority for the accused to be charged for a higher offence. In this case, the respondent could be charged for the offence of causing grievous harm under **section 225 of the Penal Code** and the case could be tried by the District Court.

Therefore, in the case at hand, the Primary Court Magistrate acted ultra vires as it lacked power, under the law, to impose such a sentence. I hereby set aside the decision of both the Primary Court and confirmation done by the District Court and order the release of the respondent unless held for other lawful reasons. It is so ordered.



Court:


Ntemi N. Kilekamajenga
JUDGE
23/03/2022

Ruling delivered this 23rd of March 2022 in the presence of the respondent and in absence of the applicant. Right of appeal explained.




Ntemi N. Kilekamajenga
JUDGE
23/03/2022