

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB DISTRICT REGISTRY)
AT DAR ES SALAAM**

CRIMINAL APPEAL NO. 77 OF 2022

(Originating from the District Court of Ilala at Kinyerezi in Criminal Case No.209 of 2020
before Hon. K.C. Mshomba, RM)

JAMES STEPHANO FRANK @ KIBA.....APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

Date of Last Order: 16th January, 2023

Date of Judgment: 10th February, 2023

E.E.KAKOLAKI, J.

*“It is certain therefore, that where the lower court may have not observed the demands of any particular provision of law in a case, **the Court cannot justifiably close its eyes on such glaring illegality because it has duty to ensure proper application of the laws by the subordinate courts and/or tribunals.**” (Emphasis supplied)*

The duty imposed on the higher court to the lower courts as deduced from the above quoted decision of the Court of Appeal in the case of **Adelina Koku Anifa & Another Vs. Byarugaba Alex**, Civil Appeal No. 46 of 2019 (CAT-unreported) is what carries the contents of this ruling. Courts in this land have a duty of applying and interpreting properly laws of the country

failure of superior courts are duty bound to interfere and ensuring proper application of the said laws by the lower courts. This mandatory duty was also expressed in unambiguous terms by the Court of Appeal in the case of **Marwa Mahende Vs. Republic** [1998] T.L.R. 249, where the Court had this to say:-

*"We think . . . the duty of the Court is to apply and interpret the laws of the country. **The superior courts have the additional duty of ensuring proper application of the laws by the courts below**" [The emphasis is mine]*

In adhering strictly to this noble duty and while preparing for the hearing of the appeal preferred by the above named appellant this Court noted the anomaly in the judgment resulted from non-compliance of the law. When the appeal was called on for hearing and before parties could be heard on the merits of the appeal, two issues were raised suo motu by the Court and parties invited to address them as to whether the judgment lacking points for determination contravenes the law and if yes, whether the appeal was competent before the Court. In so doing the appellant appeared in person unrepresented while the respondent enjoyed the services of Ms. Yasintha Peter, learned Senior State Attorney.

Briefly indicted before the District Court of Ilala at Kinyerezi, the appellant was faced with a charge of Armed Robbery; contrary to section 281A of the Penal Code, [Cap. 16 R.E 2019]. It was prosecution case which was made of three witnesses without any exhibit tendered that, the appellant on 08/04/2020 at Gongo la mboto area within Ilala District, Dar es salaam Region, did steal from Paul Rweyemamu one smart phone make Tecno valued at Tshs. 30,000/-, cash money Tshs. 6,500/= and a pair of shoes valued at Tshs. 5,000/- all making a total of Tshs. 51,000/- and immediately before and after such stealing, threatened the said Paul Rweyemamu with a knife in order to obtain and retain the said properties. The appellant who fended for himself without tendered exhibits flatly denied the accusations levelled against him. At the end of the trial the trial court was satisfied that prosecution case was established to the hilt and proceeded to convict the appellant as charged while awarding him a prison mandatory sentence of 30 years, the decision which displeased the appellant who decided to challenge it in this Court through his memorandum of appeal carrying nine (9) grievances which for the purpose of this ruling I find it irrelevant to reproduce them.

Responding to the suo motu raised issues by the Court Ms. Peter submitted that, after going through the whole judgment she noted it was missing points for determination hence not a judgment at all for contravening the provisions of section 312(1) of the Criminal Procedure Act, [Cap. 20 R.E 2022](the CPA). As there is no sound judgment Ms. Peter answered the second issue in negative that, the appeal before the Court is incompetent hence bound to be quashed and sent aside before the matter is remitted to the lower court for the trial magistrate to compose a fresh judgment in accordance with the law and so prayed. On the appellant's side, the matter was left to the Court for its consideration bearing in mind that the appellant is a lay person. It is true and I embrace Mr. Peter's submission that, under the provisions of section 312(1) of the CPA, a sound judgment must contain among other contents ***point or points for determination, the decision thereon and the reasons for the decision.*** See section 312(1) of the CPA, which provides that:

*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. (Emphasis supplied)

In several occasions this Court and Court of Appeal have insisted on what should constitute a sound judgment. In the case of **Yusuph Abdallah Ally Vs. DPP**, Criminal Appeal No. 300 of 2009 (CAT unreported), when the Court of Appeal had an opportunity to describe the contents of judgment, made the following observations:

*“It is settled law that a judgment should contain inter alia, **the point or points for determination**; the decision thereon and the reasons for such a decision.” (Emphasis supplied)*

The contents of the judgment above pointed no doubt applies on both criminal and civil cases. I am alive to the fact that, every Magistrate or Judge has his own style of composing judgments. In spite of that, in so doing has to make sure that the essential or mandatory ingredients of the judgment are contained therein. My perusal of the impugned judgment of the District Court of Ilala in Criminal Case No. 209 of 2020, left without doubt that, in composing it the learned trial magistrate infringed the mandatory provisions of the law as ascribed in section 312(1) of the CPA, for not disclosing or pointing out the points for determination before discussing and analysing the

evidence. This is conspicuously seen at page 7 of the judgment where he started analysing the evidence against the law without being guided by any point for determination. This reminds of the East African sailor who would sail in the deep sea without having a compass to guide him of the direction to take, hence finds himself lost and anchoring the ship to the far east dock where he had not intended to go. Composing a judgment without points for determination therefore in my humble view is like sail a ship in the deep sea without a compass, as that is not only contrary to the law but also leads to wrong or unintended conclusion or decision.

As the challenged judgment unsound in law for contravening the provisions of section 312(1) of the CPA, I share Ms. Peter's view that the appeal originating from that decision is incompetent before this Court and therefore bound to be struck out after the judgment is quashed.

In the premises, this Court is enjoined to quash and set aside the judgment of the District Court of Ilala at Kinyerezi in Criminal Case No. 209 of 2020, which order I hereby issue. Having quashed the judgment in which this appeal is stemmed I hold that there is no competent appeal before this Court. Further to that I make an order that, the case file be remitted to the trial court for composing a fresh judgment in accordance with the law by the

trial magistrate or any other competent magistrate in case the trial magistrate is absent.

It is so ordered.

DATED at Dar es Salaam this 10th day of February 2023.



E. E. KAKOLAKI

JUDGE

10/02/2023.

The judgment has been delivered at Dar es Salaam today 10th day of February 2023 in the presence of the appellant in person, Mr. Paul Kimweri, Senior State Attorney for the respondent and Ms. Monica Msuya, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

10/02/2023.

