

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO

CRIMINAL REVISION NO. 09 OF 2023

(Arising from Criminal Revision No. 26/2023 Kilombero District Court, Originating from conviction and sentence of Mang'ula Primary Court, Criminal Case No. 115 of 2021)

RAMADHANI MDOE..... APPLICANT

VERSUS

MAWAZO ALLY RESPONDENT

RULING

Ruling date on: 16/06/2023

NGWEMBE, J.

The applicant in this matter was sentenced by Mang'ula Primary Court having been convicted for the offence of stealing contrary to section 265 of **The Penal Code, Cap 16 RE 2002**. It was alleged that he did steal one bicycle locally referred to as *Kamongo type* worth Tshs. 120,000/=. The trial magistrate seems to have taken into consideration the fact that the applicant was not a first-time offender as he had two previous convictions, so he sentenced the applicant to 3 years jail term.

On this court's visit to Kiberege Prison, the applicant among others submitted an oral complaint on the case generally. But what apparently brought attention of this court is the extent of sentence passed by the trial court, considering the offence was of simple theft, which in my preliminary perception was neither serious nor had any aggravating circumstance. It is also a common ground that theft like this does not



fall in any of the Minimum sentence provisions of the law in our jurisdiction.

Under section 30 (1) of **The Magistrate's Courts Act**, this court directed the Resident Magistrate In charge of Kilombero District Court, to call for and examine the records of the trial court in Criminal Case No. 115 of 2023, which she complied via Criminal Revision No. 24/2023.

However, the ruling of the Resident Magistrate declined to revise anything in that case. She declared that her hands were tied from revising an illegal sentence of three years imprisonment passed by Mang'ula Primary court because twelve months period had lapsed. She made an order that, the applicant should continue serving his imprisonment.

It is upon learning this outcome that, the files were called by this court for proper guidance to both subordinate courts.

At the onset, I think the district court's approach was unwarranted, especially when exercising revisional powers *suo motu* after it had spotted an apparent illegality such as this one under scrutiny. I have asked of what was the intention of the legislature in limiting powers of the courts even in supervisory powers in proceedings initiated *suo motu*. If that was the intention the provision would be expressly clear. Otherwise section 22 (4) of **The Magistrate Courts Act** need to be amended so that it can provide for a separate provision of revision *suo motu*.

I am increasingly of the view that, the district court had to pay considerable attention to the fact that, the applicant was serving three (3) years sentence awarded by primary court. Also, that if nothing is done by courts superior to the trial court, the applicant would end up languishing in jail for the whole period of three years for no valid cause.

Having initiated the revision suo motu, the district court was expected to consider the issue of whether the primary court was correct to pass the sentence of three (3) years imprisonment for the offence of stealing, but it did the contrary. The district court having abdicated from such duty under the umbrella of section 22 (4) of **The Magistrate's Court Act** on which I have already offered my opinion, I will deal with the issue as hereunder.

First, there is a rule of legality of punishment that there is no punishment without law which goes by a Latin maxim *nulla poena sine lege*. In my broad interpretation, I understand the rule means that; *first* - a court cannot pass any punishment which is not prescribed by law (penal provision). *Second* – The court cannot pass any sentence beyond its sentencing powers (jurisdiction provision). Third – the court cannot sentence an accused in defiance of the laid down procedures.

The sentencing powers of primary courts in criminal cases are provided for under sections 2 and 7 of the **Third Schedule** to the **Magistrates' Courts Act**. Section 2 provides that: -

Section 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) – (c) NA*

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"



As it can be extracted from above, the primary court cannot pass any imprisonment sentence beyond the limits prescribed by law. It is only allowed to pass sentence up to six (6) months without confirmation by the district court, and any imprisonment exceeding six (6) months up to twelve (12) months is subject to confirmation by the district court. Also, any minimum sentence for an offence falling under The Minimum Sentences Act, which it has jurisdiction to try, it may pass.

Accordingly, the primary court in this case, exceeded its jurisdiction by passing a sentence of imprisonment for the period of three years. The applicant was convicted for a simple theft, the offence which as earlier characterized had no special circumstances attracting severe punishment. Even the previous convictions of the applicant would in no way justify giving a sentence above 12 months. Therefore, the sentence passed by primary court was illegal and should not be left to stand. Even the revision made by the district court which blessed illegal sentence was equally illegal.

Considering that most of prisoners convicted by subordinate courts have no advantage of access to legal assistance and the custom of prisoners being transferred from one prison to another, it is not easy for them to challenge the sentences and orders meted by trial courts. Even when they contemplate, they cannot manage without a trained mind to assist them on the techniques and legal procedures. From the authorities I have managed to lay my hands and for preserving the spirit of justice, I have no slight doubt to decide that a subordinate court with revisional jurisdiction should not be impeded by time limitation from curing the illegality which has been spotted like in this case.

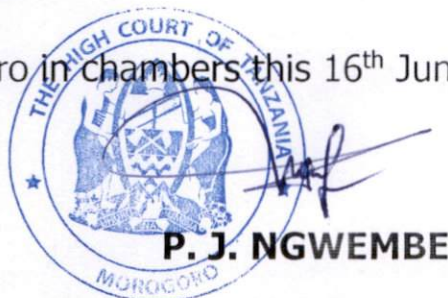
The magistrates in the district courts may go through the cases of **Province of Sindh & Others vs. Rahim Bux Khan & Others, Civil**

Revision No. 64 of 1992, Millicom Tanzania NV vs. James Alan Russels Bell & Others (Civil Revision No. 3 of 2017) [2018] TZCA 355 and Registered Trustees of Masjid Mwinyi vs. Pius Kipengele Others (Civil Revision No 2 of 2020) 2021 TZCA 357 and apply a liberal interpretation of section 22 (4) of **The Magistrate Courts Act**. In any even they are not barred from exercising their revisional powers *suo motu* to cure injustices occasioned in their jurisdictions. Revisional powers are supervisory in nature aimed to cure errors and illegalities which may not be feasible to deal with in other normal procedures. This court put reliance on this approach than that of requesting this court to cure them since intervention by this court will not be expected to be convenient in all cases.

All said and reasoned, I proceed to set aside the illegal sentence of 3 years and in lieu thereof, considering the aggravating factors that the applicant had previous convictions, replace it with the valid sentence of twelve (12) months. It is also unfortunate that the applicant had already exceeded twelve months in prison, since when he was sentenced. This makes him eligible for an immediate release which I accordingly order, unless he is held for any other lawful cause.

Order accordingly.

Dated at Morogoro in chambers this 16th June, 2023.



P. J. NGWEMBE

JUDGE

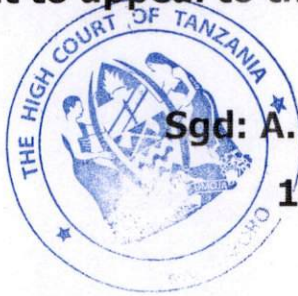
16/06/2023

Court: Ruling delivered at Morogoro in chambers on this 16th day of June, 2023 in the absence of both parties.


Sgd: A.W. Mmbando, DR

16/06/2023

Court: Right to appeal to the Court of Appeal explained.




Sgd: A.W. Mmbando, DR

16/06/2023