

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

CRIMINAL REVISION NO. 11 OF 2023

*(Arising from Criminal Revision No. 06/2023 Kilombero District Court, Originating
from Criminal Case No. 09 of 2022 in Mkamba Primary Court)*

ADAM SALUM APPLICANT

VERSUS

BLASIOUS DAUDI RESPONDENT

RULING

Ruling date on: 16/06/2023

NGWEMBE, J.

This ruling is in respect of revision made by this court *suo motu* following the visiting of Kiberege Prison in Kilombero district, I received several complaints from inmates. The applicant herein Adam Salum is one of those complainants who raised serious concerns on irregularities committed by both subordinate courts. That he was charged in Criminal Case No. 09 of 2022 with two counts; burglary contrary to section 294 (2) and Stealing contrary to section 258 (1) and 265 of the **Penal Code Cap 16**.

The applicant was convicted for stealing, consequently the trial Primary court sentenced him to three (3) years imprisonment. The Resident Magistrate In charge of Kilombero District Court, initiated a *suo motu* revision through Criminal Revision No. 06/2023. But in her ruling, the magistrate abstained from varying any order and sentence entered by the trial Primary Court in the original Criminal Case No. 09/2022 on ground that, time prescribed for revision had expired. Cited section 22

(4) of **the Magistrates' Courts Act, Cap 11 RE 2022**. Hereunder is what the revising Magistrate held in page 2 of her ruling: -

"The matter was in the same primary court heard and ended by convicting and sentencing the accused person to (sic) serve a 3 years sentence in prison. On reading thoroughly through the entire proceedings and the resultant judgment of court, I have noted, the matter was at Primary court of Mkamba filed on 18/02/2022 and the sentence delivered on 2/3/2023 which the said period limits me to act with reference to section 22 (4) of the MCA Cap 11 RE 2022. On this reality, I am hands tied from acting on this case. The accused person shall continue serving his term of imprisonment as by primary court imposed."

I understand that, generally revision of proceedings under section 22 of **The Magistrates' Courts Act**, is limited to 12 months. Subsection 4 of section 22 provides thus: -

Section 22 (4) *"No proceedings shall be revised under this section after the expiration of twelve months from the termination of such proceedings in the primary court and no proceedings shall be further revised under this section in respect of any matter arising thereon which has previously been the subject of a revisional order under this section."*

Considering that the applicant is still in prison, this court has a legal duty to correct a mischief committed by subordinate courts. Under section 30 (1) of **The Magistrates' Courts Act**, this court called for the records of both the primary court and district court in order to satisfy itself as to propriety of the judgment and sentence therein.

Having revisited those proceedings, two points for determination are framed; *One* - whether the primary court had jurisdiction to sentence

the applicant to three (3) years imprisonment for the offence of stealing. *Two* - whether the district court was correct to ignore the sentence so passed on any ground whatsoever?

It is common ground that the learned magistrate of the district court in exercising her revisional powers, in a case where there was no actual application by the convict, was actually exercising her supervisory powers *suo motu*. This is because revisional powers are in a form of supervision. This court has asked itself whether time limitation under section 22 (4) of **The Magistrates' Courts Act** would apply against criminal revision initiated *suo motu*? It is so unfortunate that the provision is general, same does not differentiate between the revision initiated by the party's application and those initiated by the court upon identifying some irregularity or illegality.

In order to resolve the issue properly, I think it is good to point out how the primary court exercised its powers. As earlier alluded, the applicant was sentenced to three (3) years imprisonment for the offence of stealing which does not fall within the **Minimum Sentences Act Cap 90 R.E 2002** nor any other minimum sentence provision of the law. The powers of the primary court in criminal cases are provided under sections 2 and 7 of the Third Schedule to the **Magistrates' Courts Act**. Section 2 provided: -

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) 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"

Even a sentence of twelve months if passed by the primary court, it cannot be executed without being confirmed by the District Court under section 7 of the Schedule which provides that: -

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."*

It follows therefore that sentencing powers of primary court in respect of imprisonment are limited to maximum of 12 months. Also, a sentence more than 12 months if the offence falls under **The Minimum Sentences Act**. Any sentence beyond those limits is illegal. The primary court was thus absolutely wrong and prejudicial to the applicant in sentencing him to three (3) years for the offence of stealing.

The district court in its revision was required to spot that illegality, and in my opinion the duty to cure the illegality would not be limited within 12 months. I understand the wording of section 22 (4) of MCA is in a way that when time prescribed has expired, the court cannot exercise its revisional powers.



Reading it strictly, it somehow implies that even this court would otherwise, be not allowed to revise proceedings made by the subordinate court if such period of time has expired.

However, generally the exercise of revision *suo motu* would not by its nature be limited by time, provided the mischief to cure is still in existence. I am persuaded by the Indian High Court in the case of **Province of Sindh & Others Vs. Rahim Bux Khan & Others, Civil Revision No. 64 of 1992**

"The consistent view is that the Court is never robbed of its suo motu jurisdiction only for the reason that a Revision Application requesting invoking of such jurisdiction is filed beyond the period prescribed thereunder. It has been further settled that revisional jurisdiction is corrective and supervisory in nature; hence, no harm would be caused if the Court seized of a revision petition exercises its suo motu jurisdiction to correct the errors of jurisdiction committed by the courts below. Such fact and the powers of the Courts can be ascertained from the plain language used in Section 115 of CPC and the intention of the legislature, whereas, exercise of this jurisdiction if allowed to go into the spiral of technicalities and restrictions of limitation, the very purpose behind conferring such jurisdiction would be defeated."

Considering the legal provisions in the above case, is somehow near to the *ratio decidendi* in **Millicom Tanzania NV Vs. James Alan Russels Bell & Others (Civil Revision No. 3 of 2017) [2018] TZCA 355** and followed in **Registered Trustees of Masjid Mwinyi Vs Pius Kipengele and Others, (Civil Revision No 2 of 2020) 2021 TZCA 357** where the Court of Appeal initiated Revision *suo motu* and the



adverse party sought to challenge propriety of the proceedings, the Court of Appeal held the following: -

"It is clear from all these cases that this Court can exercise its revisional jurisdiction suo motu, at any time which is in line with the manifest intention of parliament in deciding to vest this Court with supervisory powers over the High Court in order to determine the propriety or otherwise of the finding order or any decision of the High Court regardless of proceedings being finalized by the High Court. In the light of clear supervisory and revisional mandate of Court over the High Court which is sparingly invoked to correct errors, illegalities and improprieties, that is not to act as a court of original jurisdiction."

The Magistrates Courts Act does not contain such a comprehensive provision in respect of the district court's revisional powers. But for the sake of justice and in order to cure the illegality, this court would suggest a proper interpretation which is also compatible with good practice in dispensation of justice. District courts should have their powers unleashed from the yoke of section 22 (4) of **The Magistrates' Courts Act**, in order to cure illegalities committed by the primary court.

The sentence of three (3) years imprisonment was utterly illegal to be issued by a primary court, considering that the offence of stealing did not fall in any minimum sentence provisions. The district court's ruling blessed illegalities committed by primary court. When the first revisional court made such order, the magistrate was mindful that the applicant had served more than 12 months already.

It is upon the above observations this court exercises its revisional powers vested upon it under section 30 (1) of the Act, by revising both proceedings of the primary court and that of the district court to the

following extent; that the sentence which the trial court should have passed was of maximum of twelve (12) months only. I therefore, proceed to set aside the illegal sentence of three (3) years imprisonment, in lieu thereof, prescribe the sentence of one year which will result to an immediate release of the applicant as he has already served more than that time of one year.

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 Explained.




Sgd: A.W. Mmbando, DR

16/06/2023