

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

CRIMINAL REVISION NO. 07 OF 2023

(Arising from Criminal Revision No. 24/2023 Kilombero District Court, Originating from conviction and sentence of Mang'ula Primary Court, Criminal Case No. 169 of 2021)

BOSCO ALBANI..... APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Ruling date on: 16/06/2023

NGWEMBE, J.

This ruling is in respect of revision made by this court *suo motu*. This court exercises its revisional powers under section 30 (1) and 31 (1) of **The Magistrates Courts Act, Cap 11 RE 2019**. The court is empowered to supervise over all subordinate courts in the exercise of their jurisdiction. It is permitted by law to call for and inspect the record of any proceedings in a district court or primary court or to direct that the district court should call for and inspect the records of primary court and satisfy itself as to the legality and propriety of any decision or order and as to the regularity of any proceedings therein. Under that provision, this court may as well in itself revise any of the proceedings, and decisions of the subordinate courts.

The applicant in this matter was convicted for two offences; receiving stolen property or unlawfully obtained contrary to section 311

and stealing contrary to section 265 of **The Penal Code**, where it was alleged that on 05/09/2021 he was found in possession of one pipe, six-inch property of MORUWASA in the first count and that on 14/08/2021 he stole 7 class C water pipes valued at Shs. 2,800,000/= property of MORUWASA. The trial court sentenced the applicant to two years for first count and 18 months for the second count and ordered the sentence to run consecutively; which means the applicant was liable to serve 3 ½ years in prison.

The applicant submitted an oral complaint when I visited Kiberege Prison, where he was serving the consecutive sentences. This court found a serious question of law on legality of passing such a sentence.

By the powers it possesses under referred sections, I required the Resident Magistrate In charge of Kilombero District Court, to call for and examine the records of the trial court in such Criminal Case No. 169 of 2021, which she did via Criminal Revision No. 24/2023.

However, the magistrate despite noting illegalities apparent on the face of sentence, abstained from interfering with it. Such move was adopted by the magistrate grounding on the law of limitation for revision provided for under section 22 (4) of **the Magistrates Courts Act, Cap 11 RE 2022**. For a focused discussion which is going to be brief, I will quote part of the decision: -

"I have found it out that the matter is already out of the ambit of the twelve months provided by law...the district court has seriously been forbidden to make any revision (see section 22 (4) of the Cap 11(supra))."

It is clear that section 22 (4) of **The Magistrates Courts Act**, limits the district court's powers of revision within 12 months from the

date of judgement or ruling. That section provides nothing in respect of revision *suo motu*.

The main decisive question is whether the primary court was correct in sentencing the applicant to 3 ½ years' imprisonment for two related offences contrary to section 311 and 265 of **the Penal Code**.

Generally, sentencing powers are given and regulated by statutes. I may dare to say, there is a law for every offence and thus, every punishment must be in accordance to law. Any punishment passed by a court contrary to what the law provides is illegal.

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) 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"

Under section 7 (1) of the same Act, which practically must be read together with section 2 above, provides several punishments which are subject to the district court's confirmation. Such sentences includes


any imprisonment exceeding 6 months. To explain this in a clear language, a primary court is allowed to pass a sentence up to 6 months (when allowed by penal law) without any confirmation and any imprisonment exceeding 6 months up to 12 months subject to confirmation of the district court.

Under the same provision, a primary court can pass any minimum sentence for an offence falling under The Minimum Sentences Act, which it has jurisdiction to try. Obvious, there is no need of confirmation where the sentence is one under a Minimum Sentence provision.

The sentences passed by Mang'ula primary court in this case are therefore, illegal as they exceeded the powers that primary court have. By any means, such sentences should not be spared.

I understand the approach which the district court applied in interpreting section 22 (4) of **The Magistrate's Courts Act**. Although the wording of that section seems to be problematic as earlier pointed, here raises the question of whether limitation under section 22 (4) applies in revision *suo motu* and where illegality is seriously prejudicial to parties. I have considered also that, many of the accused persons are not aware and rarely can try to challenge legality of sentences in time.

As to whether the district court would act on the illegality of the primary court, I have formed my opinion to be yes. I have interpreted revisional powers in a purposive approach with the aid of the case of **Province of Sindh & Others Vs. Rahim Bux Khan & Others, Civil Revision No. 64 of 1992** and **Millicom Tanzania NV Vs. James Alan Russels Bell & Others (Civil Revision No. 3 of 2017) [2018] TZCA 355** and followed in the **Registered Trustees of Masjid**



**Mwinyi Vs. Pius Kipengele Others (Civil Revision No 2 of 2020)
2021 TZCA 357.**

From the cited precedents, I have gathered that the purpose of statutes to confer revisional powers over the courts is to enable them to cure the errors and illegalities which may otherwise be not reachable by normal procedure. The paramount consideration should therefore be, curing illegalities or irregularities, otherwise the sole purpose of revisional jurisdiction which is naturally, a supervisory power will be defeated.

I therefore proceed to set aside the two sentences of 2 years and 1½ year respectively, and in lieu thereof, replace with the legal sentences of six months on each offence. The applicant has served about one year and nine months as of now, this means he should be released immediately otherwise held for another good cause.

Order accordingly.

Dated at Morogoro 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