

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB-REGISTRY OF TABORA

AT TABORA

DC. CRIMINAL APPEAL NO. 15 OF 2022

(Originating from Urambo District Court in Criminal Case No. 15/2020)

KASIGA MASANJA @ NTUNGWA----- APPELLANT

VERSUS

THE REPUBLIC -----RESPONDENT

RULING

Date: 26/06/2023 & 21/07/2023

BAHATI SALEMA, J.:

The appellant **Kasiga s/o Masanja @ Ntungwa** was arraigned at Kaliua District Court facing the charge of Rape contrary to sections 130(1)(2)(e) and 131(1) **of the Penal Code**, Cap. 16 [R.E 2019]. The trial commenced on 09/03/2021 when the charge was read over to the appellant and on the spot he pleaded guilty to both charge and facts by saying "*It is true that I Raped Janet*". He was immediately convicted and sentenced to life imprisonment.

Dissatisfied with the decision of the trial Court, the appellant appealed to this Court couched with seven grounds of appeal namely.

- 1. That the case for the prosecution was not proved against the appellant beyond reasonable doubt as required by the law.*
- 2. That, the plea of guilty allegedly by the appellant was ambiguous and equivocal*
- 3. That, the record of proceeding of the case does not show the appellant's reply (in his own words) to the facts of the case.*

4. *That, even on the allegedly admitted facts of the case, the appellant could not be convicted of the offence charged.*
5. *That, the omission to read aloud in court exhibit P1, P2 and P3 affected the plea of guilty of the appellant*
6. *That the sentence of life imprisonment imposed upon the appellant is unlawful.*
7. *That the record does not show who read the facts of the case to the appellant.*

When the appeal was called up for hearing, the appellant appeared in person unrepresented whereas the Republic was represented by Mr. Dickson Swai and Ms. Wivina Rwebangira, learned State Attorneys. Both the appellant and respondents were afforded a chance to make submissions in support and against the appeal.

Before going into the merits of the case, the court having keenly traversed the records of the trial court, noted that the appellant was not properly convicted by the trial magistrate making the orders made thereof illegal.

Section 235(1) of **the Criminal Procedure Act**, Cap.20 provides that;

*" The court having heard the complainant and the accused person and their witnesses and the evidence, **shall convict** the accused and pass sentence upon or make an order against him according to law."*

The proceedings of the trial court indicates that the appellant pleaded guilty to the offence of rape as he was charged and he admitted all the facts that were read to him but when it came to entering conviction, the learned magistrate skipped important requirement of law in entering conviction, he stated, I quote;

COURT FINDINGS:

Voluntarily accused pleaded guilty to the offence and admits all facts constituting the offence hence unequivocal plea of guilty. I hereby proceed to find the accused person guilty of the offence charged with and convicts KASIGA MASANJA @ NTUNGWA with the charged offence as enshrined on the charge sheet."

Section 312 (2) of **the Criminal Procedure Act**, Cap. 20 [R.E 2019] requires the trial magistrate to state the section of law upon which the accused is convicted, a mere mention of the word convicted does not suffice to proper conviction under the law. The law states;

(2) In the case of conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted and the punishment to which he is sentenced.

In the case at hand, the findings of the lower court do not state the section of the law under which the appellant was convicted, it is my firm view that there was no proper conviction according to section 312(2) of **the Criminal Procedure Act**, Cap. 20 as the necessary prerequisite was not indicated. Compliance with these mandatory provisions has been emphasized in various cases, see **Shaban Jololo and Three Others v R**, Criminal Appeal No.200 of 2006;equally in the case of **George Patrick Mawe and 4 Others v R**, Criminal Appeal No. 203 of 2011(Unreported) where the Court of Appeal observed that;

"In the case of conviction the judgment shall specify the offence of which and the section of the Penal Code or other law the accused is convicted and the punishment to which he is sentenced. The effects

of failure to observe the mandatory provisions of the laws and hence not properly convicting the accused are that failure becomes fatal and an incurable irregularity, which renders the purported judgment and imposed sentence nullity”.

A case in point is that of **Hassan Mwambanga V R**, Criminal Appeal No. 410 of 2013 (Unreported) where the Court of Appeal held that;

"It is now a settled law that failure to enter a conviction by any trial court is a fatal and incurable irregularity, which renders the purported judgment and imposed sentence a nullity and the same are incapable of being upheld by the High Court in the exercise of its appellate jurisdiction."

Given the above irregularity, the omission is fatal as it renders void the orders that were made subsequent to the findings. In the circumstances, and the exercise of powers of revision vested to this Court under section 373 of **the Criminal Procedure Act**, Cap. 20 [R.E 2019], I quash the trial court findings and the sentence meted against the appellant is hereby set aside.

Furthermore, I order the trial case file to be remitted back to the trial Court immediately for proper construction of Court findings in accordance with section 312 of **the Criminal Procedure Act**, Cap. 20. Any party's right to appeal will count from the date of conviction and sentence. In the interim, the appellant is remanded pending compliance with the directions of this court until the delivery date.

Order accordingly.



A. BAHATI SALEMA
JUDGE
21/07/2023



Court: Judgment delivered in presence of both parties.



**A. BAHATI SALEMA
JUDGE
21/07/2023**

Right of Appeal fully explained.



**A. BAHATI SALEMA
JUDGE
21/07/2023**