

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**CRIMINAL REVISION NO. 2 OF 2021**

*(Originating from Criminal Case No. 10 of 2020 of the District Court of Dodoma at Dodoma)*

**AZIZA BADRU MWANJE.....APPLICANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

**RULING**

*29<sup>th</sup> September & 9<sup>th</sup> October, 2023*

**KHALFAN, J.**

The Applicant was arraigned in the District Court of Dodoma at Dodoma ("the trial court") with the offence of occasioning loss to a specific authority contrary to paragraph 10 (1) of the first schedule and section 57 (1) & 60 (2) of the Economic and Organised Crimes Control Act [Cap 200 R.E 2019] where by the trial court found her guilty of the offence and sentenced her to serve twenty years in prison and pay Tshs. 35,000,000/= to UCSAF as compensation for the loss suffered.

The Applicant is now before this Court to challenge the decision of the trial court by the way of revision under section 372 (1) of the Criminal



Procedure Act [Cap 20 R.E 2022] ("CPA") urging this Court to call and examine the records of the trial court in order to satisfy itself as to legality of its judgment and among other issues, the Applicant is condemning the act of the trial court to impose sentence against her without entering conviction.

However, when the matter was scheduled for hearing, Mr. Mwingira, the Learned State Attorney for the Respondent, agreed with the Applicant's application on the ground that it is clear from the trial court's record that the Applicant was sentenced without being convicted contrary to section 312 of the CPA. For that reason, it is his prayer that this Court should remit the file to the trial court for it to comply with the law.

Mr. Wasonga, the Learned Advocate for the Applicant, had no objection to the submission made by the Learned State Attorney for the matter to be remitted to the trial court for conviction in accordance with the law.

I have carefully considered the Applicant's application together with the submission made by the Learned State Attorney alongside with the trial court's judgment, it is apparent that the Learned trial Magistrate imposed



the sentence to the Applicant without convicting her which is contrary to the provision of section 235 (1) of the CPA. The same provides that:

*"The court, having heard both the complainant and the accused person and their witnesses and the evidence, **shall convict the accused person and pass sentence** upon or make an order against him according to law or shall acquit or discharge him under section 38 of the Penal Code."*

**(Emphasis is added)**

For clarity, I would like to quote the trial court's judgment in particular, page 12, 13 and 14 which reads:

*"...the accused wilfully occasioned loss of the authority the sum of Tsh. 37, 573,274/= and is hereby found guilty for occasioning loss to a specified authority to paragraph 10 (1) and (4) of the first schedule to and section 57 (1) and 60 (2) both of the Economic and Organised Crimes Control Act, Cap 200 [R.E 2019] as charged hereinabove."*

**SGD**

**TUNGARAJA- N.J – SRM**

**28/10/2022**

**PREVIOUS RECORDS;**



*No records but we pray that the accused be punished accordingly so as to serve as a lesson to other government officers misusing government funds.*

**MITIGATION;** *NIL (Accused not in court)*

**SENTENCE;**

*The charging section contravened by the accused partly reads:*

*60 (2) Notwithstanding provision of a different penalty under any other law and subject to subsection (7), a person convicted of corruption or economic offence shall be liable to imprisonment for a term of not less than twenty years but not exceeding thirty years, or to both such imprisonment and any other penal measure provided for under this Act; provided that, where the law imposes penal measures greater than those provided by this Act, the Court shall impose such sentence.*

*The sentence as prescribed under the Act is very strict and my hands are tied otherwise. The court hereby sentences Aziza Badru Mwanje to serve twenty years in prison and pay Tshs. 35,000,000/= to UCSAF as compensation for the loss suffered after serving her sentence."*



Therefore, this Court finds that the omission by the trial court is fatal as rightly submitted by the Learned State Attorney in spite of having referred to section 312 of the CPA which stipulates the contents of a judgment hence inapplicable to the circumstance of this case where the controversy is based on failure of the trial court to enter conviction.

Having found as above, I would like to concretise my findings with the case of **Emmanuel Noa and 2 Others vs. the Republic**, Criminal Appeal No. 361 of 2016 where the Court of Appeal at Tabora had the following to say:

*"It must be emphasised that a proper sentence must be imposed after a valid conviction is entered. Thus, the sentence imposed by a trial court must be based on a valid conviction...considering the import of section 235 (1) of the CPA, the Court in **Amani Fungabikasi v. Republic**, Criminal Appeal No. 270 of 2008 (unreported) stated that:*

*"It was imperative upon the trial court to comply with the provisions of section 235 (1) of the Act by convicting the appellant after the magistrate was satisfied that the evidence on record established the prosecution case against him beyond reasonable doubt."*




In the precinct of the above holding of the Court of Appeal, this Court does hereby revise, nullify and set aside the judgment of the trial court for failure to enter conviction against the Applicant as narrated above. Thus, the trial court's judgment is quashed and set aside accordingly. In the result, the trial court's file be remitted to the trial court for the trial Magistrate to compose a proper judgment in compliance with the provisions of sections 235 (1) of the CPA.

Consequently, the right of appeal to this Court shall be available to either party from the date of delivery of the newly composed judgment and meanwhile the Applicant shall remain in custody.

It is so ordered.

**Dated at Dodoma** this 9<sup>th</sup> day of October, 2023



  
**F. R. KHALFAN**  
**JUDGE**