

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

**(TANGA DISTRICT REGISTRY)**

**DC CRIMINAL APPEAL NO. 04 OF 2023**

**HEMEDI MWINJUMA MAYEGA .....1<sup>ST</sup> APPELANT**

**MOHAMED OMARI DOGOLI .....2<sup>ND</sup> APPELANT**

**SAID MOHAMED DOGOLI .....3<sup>RD</sup> APPELLANT**

**VERSUS**

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

*(Arising from the Judgment of the District Court of Handeni at Handeni in Criminal Case No.  
197 of 2018)*

**RULING**

*09/11/2023 & 14/11/2023*

**NDESAMBURO, J.:**

The appellants in this appeal faced charges and were ultimately convicted of two counts namely armed robbery contrary to section 287A of the Penal Code, Cap 16 R.E 2002, (now R.E 2019), (hereinafter Cap 16) and grievous harm, contrary to section 225 of Cap 16. Each appellant received a sentence of thirty years in prison for the first count and three years for the second count. The court ordered that these sentences be served consecutively.

The brief facts were as follows: on the material date, Raphael Loisho Laizer (PW6), a businessman and pastoralist, along with his

co-businessman Raphael Abraham (PW1) and Sepeni Mollel, went to the Nderema auction to sell cows. They successfully sold 15 cows, earning a total of Tshs. 6,000,000/=. Sepeni Mollel took Tshs. 2,000,000/=: leaving Tshs. 4,000,000/= to PW6.

After selling the cows, PW6 and PW1 boarded a bus to return home. PW6 disembarked at the Michungwani area while PW1 continued with the journey and this was around 5:00 pm. While walking home, PW6 decided to take a shortcut route to his residence. Suddenly, a man holding a gun, whom he later identified as the third appellant, emerged from the forest. Shortly thereafter, three other individuals, including the first and second appellants, appeared from the forest.

The third appellant ordered PW6 to lie down. The group proceeded to search him and confiscated Tshs. 4,200,000 from his jacket. Additionally, they took his mobile phones and shot him on the right leg. Subsequently, the appellants fled the scene. PW6 called for help, and people came to assist him. He was then taken to Mkuyu Police Post, where he received a PF3 form, and was later transported to Handeni Hospital for medical treatment.

The appellants were apprehended and subsequently brought before the District Court of Kilindi, where they were charged with two counts mentioned above. In response to the charges, they entered pleas of not guilty to both counts. The appellants vehemently asserted their innocence throughout the trial. Nevertheless, they were ultimately found guilty of both counts and received the aforementioned sentences.

Dissatisfied with their conviction and sentences, the appellants lodged an appeal with this court. In their first appeal, Criminal Appeal No. 46 of 2020, their appeal was partially successful. In that appeal, the court quashed the second count relating to causing grievous harm. However, the court determined that there was sufficient evidence to support the first count, which involved the offence of armed robbery. However, the trial magistrate had failed to adequately consider the appellants' defence and consequently, the case was remitted back to the learned trial magistrate ordering him to compose an appropriate judgment.

Following the order of this court, the matter was remitted back to the learned trial magistrate. However, it is worth noting that by that time, the trial magistrate had already been transferred to

another jurisdiction, nevertheless, he composed the judgement and sent it to the trial court.

On the 28<sup>th</sup> of December 2022, the purported judgment composed by the learned trial magistrate was delivered to the appellants, resulting to their conviction and sentencing to thirty years of imprisonment.

Once again, the appellants found themselves dissatisfied with both their conviction and the imposed sentences. Consequently, they initiated the present appeal and raised four grounds of appeal in their petition of appeal, along with three additional grounds of appeal. Due to reasons to be elaborated upon shortly, the grounds of appeal will not be listed here.

During my examination of the court's record, it has come to my attention that the judgment under consideration in this appeal was not signed by the learned trial magistrate. Efforts were made to secure a signed copy of the judgment in vain. Later on, an affidavit sworn by Munga Ismail Sabuni was filed with this court which reveals that the judgment delivered to the appellants was originally sent to him by the learned trial magistrate, however the same was



unsigned. He confirmed that he delivered the judgment to the appellant on the 28<sup>th</sup> of December 2022.

Given this circumstance, this court invited the parties to address it on the propriety of the judgment and the way forward bearing in mind that as a matter of law, the judgment must be signed by the presiding officer.

On the day fixed for the court to be addressed, the appellants were unrepresented while the Republic/Respondent was represented by Mr. Eric Mosha, a learned State Attorney.

Upon being invited to address this court, the first appellant argued that he should be released as the absence of the signature in the judgment was not his fault. The second appellant contended that the unsigned judgment rendered it void and null. Regarding the subsequent steps to be taken, he deferred the same to the court's decision. The third appellant chose to leave the matter in the hands of the court.

Mr. Mosha, on behalf of the Respondent/Republic, concisely argued that the judgment's lack of a signature rendered it void and null, thus violating the provision of section 312(1) of the Criminal

Procedure Act, Cap 20 R.E 2022, (hereinafter Cap 20). He emphasized that section 312(1) of Cap 20 makes it mandatory for judgments to be signed and dated, and the omission of this requirement is fatal and incurable, ultimately rendering the judgment null.

Consequently, Mr. Mosha urged this court to allow the appeal, quash the convictions, and set aside the sentences. He further urged the court to remit the case back to the learned trial magistrate to compose a judgment in compliance with the law. Mr. Mosha supported his argument with the precedent set by the Court of Appeal in the case of **Duma Ilindilo Pangarasi v The Republic**, Criminal Appeal No. 470 of 2019.

The appellants had no further rejoinders to make.

After hearing the arguments presented by the parties, I would like to begin by referencing the provisions of section 312(1) of Cap 20, which delineate the requirements for the content of a judgment. The section states as follows:

*"Every judgment under the provisions of section 311 shall, except as otherwise expressly provided by this Act, be written by or reduced to writing under the personal*

*direction and superintendence of the presiding judge or magistrate in the language of the court and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding officer as of the date on which it is pronounced in open court”.*

The provision cited above makes it mandatory for the judgment to fulfil several specific criteria. First and foremost, the judgment must be personally written by the trial judge or magistrate, or in cases where someone else drafts it, it must be done under their personal direction and supervision. The judgment should be in the language of the court and include the following elements: points for determination, the decision, and the reason behind that decision. Furthermore, the judgment must bear the signature of the judge or magistrate and include a date.

The Court of Appeal, as exemplified in the case of **Duma Ilindilo Pangarasi** (supra), emphasizes that the purpose of the requirement of showing the date and appending the signature is to signify its authenticity by the person who authored it. The court further held:

*"What is clear, as was rightly submitted by the learned Senior State Attorney, is that the record does not show who wrote the judgment as it was neither signed nor dated. This omission, in our considered view, amounts to a contravention of section 312(1) of the CPA which in mandatory terms requires among others the judgment to be dated and signed.... failure to sign and date the judgment was a fatal omission which is not curable under section 388 of the CPA. It renders the said judgment a nullity".*

In the case of **Patric Boniphace v R**, Criminal Appeal No. 2 of 2017 CAT (unreported) it was held:

*"In the matter at hand, since the judgment of the trial court was not signed and dated by the trial magistrate who conducted the trial, there was no judgment to be appealed against before the High Court".*

It is indisputable that the judgment leading to the conviction of the appellants, although dated, lacks the crucial signature of the learned trial magistrate. In accordance with the dictates of section 312(1) of Cap 20 and the legal precedents outlined in the two aforementioned cases, the purported judgment issued by the learned trial magistrate stands as a nullity, violating the specified



provision and established legal principles. As aptly argued by Mr. Mosha, the failure to affix a signature to a judgment constitutes a fatal omission and cannot be cured, as it offends the mandatory requirement stipulated in section 312(1) of Cap 20. This failure renders the judgment null and void. Consequently, this court declares the judgment purportedly handed down to the appellants on the 28<sup>th</sup> of December 2022 as null and void.

It follows, therefore, that the conviction and sentence that was entered against the appellants which emanated from the null judgment are also a nullity. In light of this, the court invokes its revisional powers under section 44(1)(a) of the Magistrates' Courts Act, Cap 11 R.E 2019, nullify the purported judgment, quash the convictions, and set aside the sentence of 30 years imprisonment term previously imposed on the appellants.

Furthermore, this court orders that the case be remitted to Handeni District Court with specific instructions for the learned trial magistrate, A. Kileo to compose a judgment in accordance with the law as ordered by this court. This process should be completed within a period not exceeding 30 days from the date of this ruling.

Meanwhile, the appellants shall continue to remain in custody while awaiting the judgment.

It is so ordered.

**DATED** at **TANGA** this 14<sup>th</sup> day of November 2023



  
H. P. NDESAMBURO

**JUDGE**