

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

CRIMINAL REVISION NO. 2 OF 2022

*(Originating from Criminal Confirmation No. 05/2022 of Kaliua District Court
and Original Criminal Case No. 130/2021 of Kaliua Urban Primary Court)*

MASHAKA HAMISI -----APPELLANT

VERSUS

EMILIANA BENARD ----- RESPONDENT

RULING

Date:13/03/2023 &24/03/2023

BAHATI SALEMA, J.:

On 14/12/2021 the applicant herein named **Mashaka s/o Hamisi** was arraigned at Kaliua Urban Primary Court for the offence of Stealing contrary to sections 258 and 265 of the Penal Code, Cap.16 [R.E 2019], he pleaded guilty to the charge and was thereby sentenced to serve three years term in jail.

The case file was then transferred to Kaliua District Court for confirmation of sentence. After the scrutiny of the District Court, the applicant's sentence of three years term was confirmed on 18/02/2022.

Disgruntled with the outcome, he preferred this revision application couched with five detailed grounds of appeal as paraphrased hereunder;

- i. *That the trial Magistrate imposed a sentence of three years imprisonment contrary to the statutory limitation of the sentence.*
- ii. *That the charge sheet did not disclose the ingredients of the offence*
- iii. *That the appellant was not afforded the right to be heard by the trial court.*
- iv. *That the prosecution failed to produce material witnesses to prove ownership of the properties and the said stolen property was not tendered in court.*
- v. *That the trial Court judgment does not show how the respondent proved the ingredients of the offence.*

When the application was called up for a hearing the applicant appeared in person unrepresented and the respondent did not show up. The appellant prayed the Court to adopt the grounds outlined in his affidavit to form his submission.

Having meticulously perused the records of the two courts below and the record of this application I found one important issue which is sufficient to dispose of the entire application. As pleaded by the applicant the issue for determination is whether the sentence imposed by the learned trial Magistrate contravened the law.

The sentencing jurisdiction of Primary Courts is provided under rule 2(1) of the Primary Courts Criminal Procedure Code which provides;

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 authorized 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

In the trial Court, the applicant pleaded guilty to the offence and the Magistrate sentenced him to serve a custodial sentence of three years. Indeed, as rightly pleaded by the applicant the trial Magistrate imposed the sentence contrary to the limitations set by rule 2(1) (a) of the Primary Courts Criminal Procedure Code.

According to the rules set, a magistrate serving in a Primary Court can only pass a sentence of imprisonment not exceeding six months but where the sentence exceeds six months but not more than 12 months the presiding magistrate is required by law to transfer the case file to District Court for confirmation of sentence.

In the case at hand, the learned magistrate passed the sentence of 3 years imprisonment and transferred the case file to the District Court for confirmation. It is my view that if the magistrate believed that the applicant deserved a greater sentence than she could pass,

the procedure is to convict the offender and refer him to the District Court for sentence. (Rule 3 of the Primary Courts Criminal Procedure Code).

That being said, the trial magistrate had no power to sentence the applicant to 3 years in jail. Therefore, the order of the primary Court and confirmation made by Kaliua District Court are hereby set aside. I order the immediate release of the applicant from prison unless held for other lawful reasons.

Order accordingly.



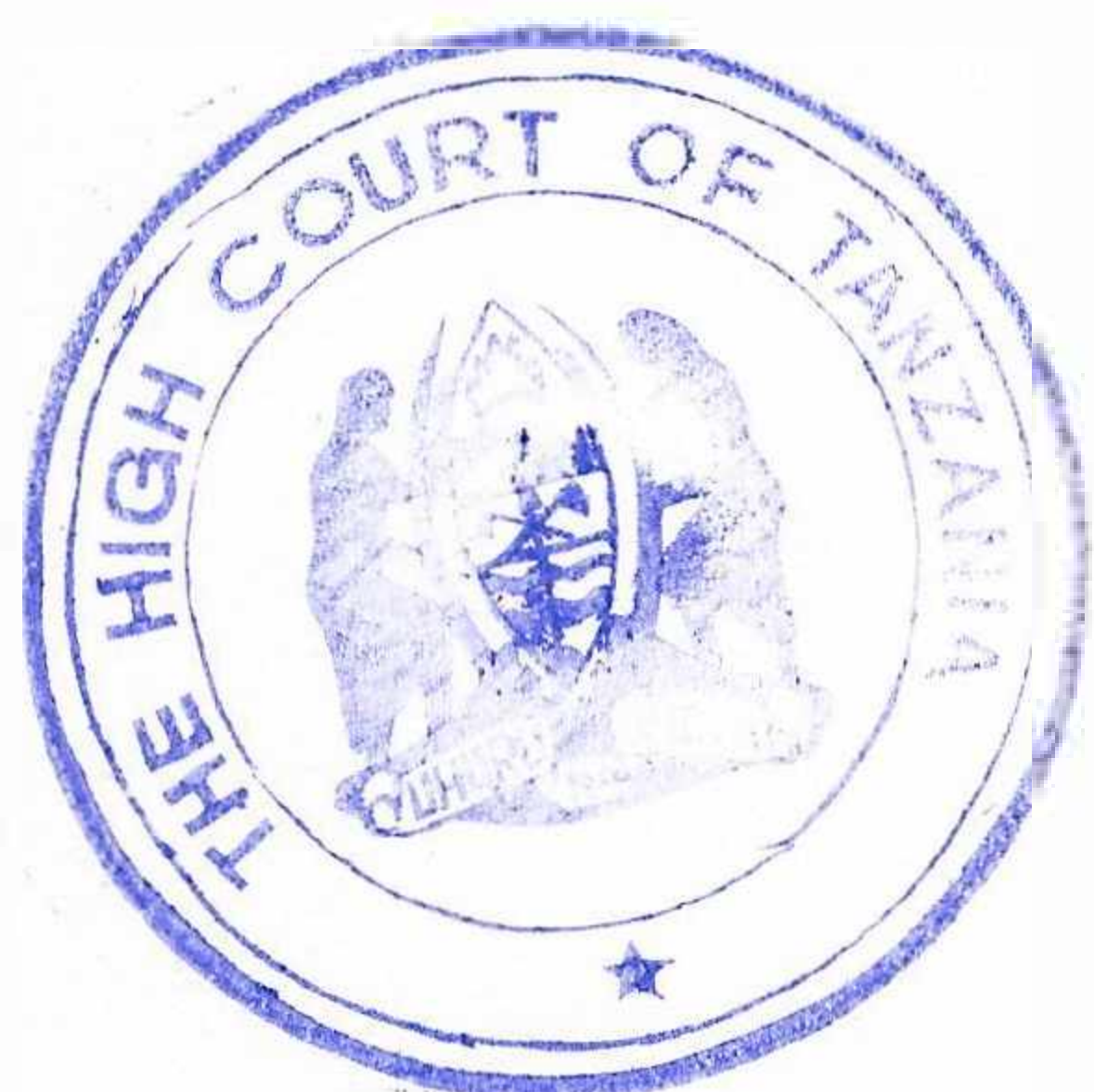
A. BAHATI SALEMA
JUDGE
24/03/2023

Court: Ruling delivered in presence of appellant.



A. BAHATI SALEMA
JUDGE
24/03/2023

Right of appeal is hereby explained.



A. BAHATI SALEMA
JUDGE
24/03/2023