

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

**(DAR ES SALAAM SUB - REGISTRY)**

**AT DAR ES SALAAM**

**CRIMINAL APPEAL NO. 34 OF 2023**

*(Appeal from the judgment of the Resident Magistrates' Court of Kivukoni at Kinondoni (Hon. Lyamuya A.M, PRM) dated 19<sup>th</sup> day of September, 2022 in Criminal Case No. 106 of 2022)*

**DANIEL CHACHA MAGERE.....APPELLANT**

**VERSUS**

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

**JUDGMENT**

**POMO, J**

Before the trial court, the appellant herein, DANIEL CHACHA MAGERE, faced three counts of an offence charged, **firstly**, rape contrary to section 130(1)(2)(e) and 131(3) of the Penal Code, [Cap. 16 Revised Edition 2019] (now R.E.2022) (the Penal Code); **secondly** unnatural offence contrary to section 154(1)(a)(2) of the same Penal Code, and **lastly**, grave sexual abuse contrary to section 138C (1) and (2)(b) of the Penal Code. According that laid down charge sheet, the appellant committed the offence charged against a girl aged six years (name withheld to hide her identity) on diverse

dates between January, 2022 to 20<sup>th</sup> May, 2022 at Global Internation School Kinondoni area within Kinondoni District in Dar es Salaam region. He pleaded not guilty to the offence therefore a case went for trial stage. The respondent republic called five (5) witnesses in proving the offence and on the other hand the appellant fended himself without calling any witness.

The Appellant is now serving a thirty (30) years jail imprisonment for the offences charged. He has paraded ten (10) grounds of appeal before this appeal. For the reasons to be apparent later, I will not reproduce them here.

In this appeal, the appeal enjoyed legal services of Messrs. Francis Mwita and Daniel Odour, learned advocates while the Respondent republic has a legal representation of Ms. Dorothy Massawe, learned principal state attorney. I ordered disposal of the appeal be by way of written submissions. I am grateful to both sides of the appeal for their well-researched submissions for and against the appeal filed timely.

However, in the course of composing the judgment, having read the lower court record as well the judgment and sentence the appellant is currently service thirty (30) years jail imprisonment, I encountered an issue

calling for a need both side of the appeal to address this court first. This is what is revealed from the trial court record: -

On 28<sup>th</sup> August, 2022 the Appellant (accused) closed his defence and thereby the trial court fixed a judgment date on 12/09/2022. When the case came for judgment on the said 12/09/2022, the judgment was not ready composed, therefore the court fixed 19<sup>th</sup> September, 2022 to be a date on which the judgment will be delivered. Surprisingly, the proceedings is silent on what transpired on 19<sup>th</sup> September, 2022 as to whether the judgment was delivered or not. (See pp. 32 – 33 of the certified typed trial court proceedings also the last page of the handwritten proceedings). In other word, the trial court proceedings, do not show whether the judgment was pronounced or not.

Following the above, I re-opened the appeal to allow both sides of the appeal to address this court on the issue. Both sides have dully filed the respective submissions in respect of this observed anomaly

For the Appellant, Mr. Francis Mwita has argued that, it is true, apart from recording the coram, nothing is shown in the proceedings, both handwritten and typed, whether on 19<sup>th</sup> September, 2022 the trial court

pronounced the judgment or not, hence it is undisputable that no activity which was done on that date. That, no judgment which was delivered, Mr. Mwitwa stressed. For lack of proper judgment, according to him, there was no conviction entered against the appellant and therefore there is no judgment which can be challenged. He cited to this court section 235(1) of the Criminal Procedure Act, [Cap. 20 R.E. 2019] (the CPA), **Omari Hassan Kipara versus Republic**, Criminal Appeal No. 80 of 2012 CAT and **Mustapha Hassanani Mkussa versus Republic**, Criminal Appeal No. 247 of 2017 High Court at Dar es Salaam (unreported). In the end he prayed the judgment be revised and the sentence be quashed. The appellant be acquitted as is serving unknown sentence.

On the respondent republic's side, although admits the proceedings to be silent on what transpired on 19<sup>th</sup> September, 2022 the date on which was set for judgment delivering, are of the submission that page 14 of the judgment provides for continuation of what was supposed to be recorded at page 33 of the trial proceedings for the same provide for conviction and sentence of the appellant. Further, the respondent republic is of the assertion that what transpired with the original proceedings was a mere misplacement or error which happened while compiling the court proceedings

I have given due consideration the submissions by both sides. All do agree that, apart from writing coram, on 19<sup>th</sup> September, 2022 the date on which the matter was coming for judgment, the trial court proceedings is silent on what transpired. In other words, nothing is recorded as to whether the judgment was delivered or not.

There is nowhere else one can find what transpired in a court of law in a particular case on each court attendance except in the court Proceedings. According to Black's Law Dictionary, 8<sup>th</sup> Edition at page 1241 defined the word **proceedings** thus: -

*"The regular and orderly progression of a lawsuit, including **all acts and events between the time of commencement and the entry of judgment.**"*

The respondent republic is of the argument, if I have understood her well, that the proceedings of the 19<sup>th</sup> day of September, 2022 are found on the judgment. It is my considered view that judgment is a different document carrying a different meaning from the court proceedings. There cannot be a judgment which at the same time is a proceedings of the court.

Going by the stance of the respondent republic, still the said judgment is flawed with defects. The authentication part of the judgment, which is

page 15 of it, the judgment, the trial magistrate is on the judgment using the following words:

*"I certify that this is a true copy of the original*

*A.M. Lyamuya – PRM*

*19<sup>th</sup> September, 2022"*

On other places demanding trial magistrate's endorsement of his signature bears no signature instead the words "**sgd. A.M. Lyamuya – PRM**" and the date (see page 14 – 15 of the judgment).

That is the only judgment which forms the trial court record, as in it there is no handwritten judgment, or a typed first-hand signed judgment from which this court could have regarded the one certified as a true copy of the original emanated from it. In other words, in the judgment, the conviction part as well the sentence together with those termed as proceedings bears no signature of the presiding magistrate rather the words signed "**sgd. A.M. Lyamuya – PRM**". Therefore, even if I was to take that path taken by the respondent republic, that the proceedings are found in the judgment, still there is nothing as first hand record of the proceeding.

In the circumstances, I find that there is nothing as judgment from which the appellant is serving a thirty (30) years jail imprisonment sentence

for it was not delivered and if anything, the means used is unknown to our legal system. Further, the allegedly judgment, bears no any first-hand signature of the presiding magistrate instead the word “**sgd. A.M. Lyamuya – PRM**” which is contrary to the legal requirement.

Under section 312(1) of the Criminal Procedure Act, [Cap. 20 Revised Edition 2022] which provide for the contents of the judgment, signing of the judgment being among the contents, provides thus: -

*"S.312- (1) **Every judgment**, under the provision 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."*

Following the above exposition on the obvious to the proceedings and the judgment, I hereby set aside the judgment, quash the proceedings and order for retrial of the case before another magistrate. Retrial is ordered basing on the fact that the respondent republic is nowhere to be blamed in

the procedural faults to the proceedings and judgment occasioned by the trial court.

It is so ordered

Right of Appeal explained

Dated at DAR ES SALAAM this 12<sup>th</sup> day of June, 2024



**MUSA K. POMO**  
**JUDGE**  
**12/06/2024**



**Court:** - Judgement delivered on this 19<sup>th</sup> day of June, 2024 in the presence of the Appellant represented by Mr. Mangiteni Marwa, learned advocate. Also, in presence of Ms. Agness Mtunguja, learned State Attorney for the Respondent Republic. Right of Appeal explained

**Sgd: L. Lyakinana**  
**Deputy Registrar**  
**19/06/2024**