

IN THE HIGH COURT OF TANZANIA

DODOMA SUB – REGISTRY

AT DODOMA

DC. CRIMINAL APPEAL NO. 57 OF 2023

(Arising from the decision of the District Court of Dodoma in Economic Case No. 8 of 2020)

MARTIN LAZARO TEMU 1ST APPELLANT

DICKSON JAPHET MALOGO @ TADAYO 2ND APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

28th February, & 15th March, 2024.

MUSOKWA, J.

This is an appeal from the conviction and sentence that was entered on 6th March, 2023 against the appellants herein, by the District Court of Dodoma, (Mpelembwa- PRM). The appellants, were jointly charged with three counts. In addition, the 1st appellant was charged alone with the fourth count. The joint counts to which the appellants were charged were as follows; 1st count stealing contrary to section 258(1) & 265 of the Penal Code, Cap. 16, R.E. 2019 (Penal Code); 2nd count stealing contrary to section 258 (1) & 265 of the Penal Code; and 3rd count stealing contrary to section 258 (1) & 265 of the Penal Code. The 1st appellant was charged alone with a 4th count, namely money laundering, contrary to sections 12

(b) and 13 (a) of the Anti-Money Laundering Act, Cap. 423 R.E 2019 read together with paragraph 22 of the First Schedule to, and sections 57 (1) and 60 (2) of the Economic and Organized Crimes Control Act, Cap. 200, R.E. 2019. The brief facts of the matter are narrated hereunder:

It is alleged that on 29th August 2019, the appellants while at the Equity Bank, University of Dodoma branch, within the District of Dodoma, at Dodoma committed a crime. The crime involved theft of TZS. 120,370,750/=; USD 9,513; and 50 Euros all being the property of Exim Bank Tanzania. The particulars of the 4th count to which the 1st appellant was charged; are to the effect that on 29th August 2019 at Unyankahae/Mandewa street within the municipality of Singida, the 1st appellant, converted part of the amount that was stolen, therefore TZS. 141,427,125/= into landed property by purchasing a plot of land, Plot No. 1001 "B" situated at Unyankahae/Mandewa street.

The appellants, being aggrieved by both conviction and sentence of a term of 4 years imprisonment for each of the counts to which they were convicted, the sentences to run concurrently, preferred to challenge the decision of the trial court through the present appeal. The grounds of appeal will not be reproduced for reasons that will be apparent in the ensuing paragraphs.

On the date scheduled for hearing, the appellants appeared in person and fended for themselves. The respondent was duly represented by Ms. Patricia Mkina, learned state attorney. The appellants, having waived their right to begin, the learned state attorney took the floor and commenced with her submissions. Ms. Mkina informed the court that in perusal of the typed proceedings of the trial court including the judgment, she had stumbled across certain procedural anomalies which she prayed leave of the court to address, instead of responding to the grounds of appeal. Ms. Mkina proceeded to explain that the presiding trial magistrate, upon conclusion of the trial, did not state the provision of the law under which he convicted the appellants. The honorable trial magistrate furthermore, failed to state the offences to which he convicted the accused persons, the appellants herein. The oversight aforementioned is in contravention of section 312(2) of the Criminal Procedure Act, Cap. 20, R.E. 2019 (CPA) which provides that the judgment should indicate that the accused persons were convicted. The learned state attorney added further that, the law requires the judgment to contain the offence to which the accused person has been convicted, and the contravened section of the law, in accordance with the offence charged.

Ms. Mkina, referring to page 61 of the copy of the judgment, submitted that the said judgment is incomplete and does not qualify to be a judgment as per the requirements of the law. The learned state attorney reiterated that the anomalies on the records raise doubt as to whether the appellants were duly convicted in accordance with the law. In view of the foregoing, Ms. Mkina prayed the court to order that the matter be remitted to the trial court, to afford the trial magistrate an opportunity to properly convict the appellants by stating the specific provision under which the appellants were convicted. In concluding her submission, Ms. Mkina further prayed that once the appellants have been properly convicted, then the hearing of the appeal before this court may proceed accordingly.

In reply, the 1st appellant vehemently disputed the submission of the respondent averring that the trial magistrate duly convicted both appellants. The 1st appellant explained further that the honorable magistrate properly entered conviction for the 1st, 2nd, 3rd and 4th counts whereby, the 1st count was for stealing Tanzanian shillings; the 2nd count was for stealing United States Dollars; and the 3rd count was for stealing Euros. However, the 1st appellant did not specify the respective amounts of money relating to the counts. Proceeding with his submission, the 1st

appellant stated that the 1st and 2nd appellants were charged and thereupon convicted for the 1st, 2nd and 3rd counts. However, the 1st appellant alone was charged with the 4th count which the respondent failed to prove and as the result, the 1st appellant was acquitted for the 4th count. The 1st appellant emphasized that the honorable trial magistrate properly convicted the appellants on the 1st, 2nd and 3rd counts. Further, he submitted that the sentence was 4 years for each count, and the sentences were to run concurrently.

The 1st appellant, while maintaining his position that conviction was duly entered against both appellants, proceeded to refer to section 312(2) of the CPA, and concurred with the respondent that the trial magistrate did not specify under which provision conviction was entered. The 1st appellant further referred to section 235 (1) of CPA, stating that the section provides for the procedure of entering conviction. He therefore reiterated that the trial magistrate properly convicted the appellants, as provided under section 235 (1) of CPA. Adamantly, he stated that he counters the arguments advanced by the respondent that the trial magistrate did not properly convict the appellants. In such circumstances, he added, the decision of the appellate court should favour the appellants, for the interests of justice. Therefore, he prayed

the court to consider their predicament and allow their appeal. The 2nd appellant concurred entirely with the submission of the 1st appellant stressing that the court should dispose the matter in their favour.

Upon scrutiny of the contested anomalies, I agree with Ms. Mkina that the judgment of the trial magistrate was shallow, to say the least. Section 312(2) of the CPA provides as follows: -

*"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". [emphasis added]*

The typed judgment of the trial court is recorded as follows on page 58:

*"...In the view of the reasons endeavored above, I find the prosecution proved their case to the required standard. **Then, accused persons find guilty and convicted therein**"*

Sign:

D.J Mpelembwa, PRM

In addition, page 61 of the typed judgment of the trial court, reads as herein below:

*"...Therefore, I am constrained basing on the above analysis **to convict the accused person to serve four years term in jail for each count. Sentence to run concurrent**".*

Basing on the records quoted above, Section 312(2) of the CPA which is coached in mandatory terms was violated in that the offence and the respective sections of the law under which the accused persons were convicted was not cited at all. Notably, the charged offences were based on the Penal Code, the Anti-Money Laundering Act, and the Economic and Organized Crimes Control Act. In that regard, specifications of the respective sections and the laws on the conviction and sentence was important. Similarly, the 1st appellant, concurred with the respondent that the trial magistrate did not specify under which provision the sentence was passed. Importantly, the 1st appellant sought a shield under section 235 (1) of CPA to support his argument that the conviction was proper. In my view, section 235(1) of the CPA provides general rules for conviction followed by the sentence. On the other hand, section 312(2) of the CPA supplements the provision of section 235(1) of CPA by giving more details

on the manners of conviction, sentence as well as citing the respective offences and the violated sections. Thus, the argument of the 1st appellant that the conviction was proper basing solely on section 235(1) of CPA cannot stand as section 235(1) of the CPA ought to be read together with section 312(2) of CPA.

In the case of **Emmanuel Kabelele Vs Republic, Criminal Appeal No.419 of 2015** (unreported), the Court of Appeal of Tanzania (CAT) sitting at Tabora held that conviction is one of the pre-requisites of a judgment in terms of Section 312(2) of Criminal Procedure Act. On page 5, it was held further as follows: -

*"In **SHABANI IDDI JOLOLO AND 3 Others Vs. REPUBLIC**, Criminal Appeal No. 200 of 2006 (unreported) **the Court reiterated that a conviction is one of the pre-requisites of a judgment in terms of Section 312(2) of Criminal Procedure Act which states...In the light of the cited authorities, conviction should not miss in the judgment. If conviction is missing, the sentence is illegal and there can be no valid judgment of the trial court against which a first appeal can be lodged in the High Court and***

subsequently a second appeal to the Court”. [emphasis added]

The case of **Emmanuel Kabelele** (*supra*) further provides guidance as to the way forward. The CAT held on page 6 as follows: -

“...quash the purported judgment of the trial Court and thirty years imprisonment. Similarly, we quash and set aside the proceedings of the High Court in the first appeal. It is ordered that the record of trial be returned to the trial court for composition of the judgment as per mandatory requirements of sections 235(1) and 312(2) of the Criminal Procedure Act”. [emphasis added]

On the basis of the holding of the Court of Appeal above, I find the foregoing procedural irregularities to be fatal and incurable. Accordingly, I quash the purported judgment dated 06th March, 2023 (D.J. Mpelembwa, PRM) and sentence thereof. In the circumstances, I proceed to order the case file to be remitted to the trial Magistrate or his successor in office to compose a judgment in compliance with section 312(2) of the CPA expeditiously. The trial court should consider the period served by the appellants during the sentencing. Meanwhile, the appellants shall

remain in custody and will be summoned by the trial court on the date of delivery of a proper judgment. It is so ordered.

Right of appeal explained.

DATED at DODOMA this 15th day of March, 2024.



A handwritten signature in dark ink, appearing to read "I.D. Musokwa".

I.D. MUSOKWA
JUDGE

Ruling delivered in the presence of State Attorneys, Ms. Victoria Njau and Ms. Magreth Tlegray; and in the presence of the 1st appellant and the 2nd appellant.



A handwritten signature in dark ink, appearing to read "I.D. Musokwa".

I.D. MUSOKWA
JUDGE