

**IN THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(DISTRICT REGISTRY OF MBEYA)**

**AT MBEYA**

**CRIMINAL APPEAL NO. 90 OF 2021**

*(From the decision of the District Court of Momba at Chapwa (Hon. C. C. Makwaya, DRM) in Criminal Case No. 209 of 2016)*

**DAVID AUGUSTINE LYIMO.....APPELLANT**

**VERSUS**

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

**RULING**

*Date of Hearing : 25/04/2022*

*Date of Ruling : 27/04/2022*

**MONGELLA, J.**

In the district court of Momba at Chapwa, in Criminal Case No. 209 of 2016, the appellant was arraigned for the charge of unlawful possession of wild animal contrary to section 86 (1) (2) (b) of the Wildlife Conservation Act, No. 5 of 2009. In the charge it was alleged that on 19<sup>th</sup> December 2016 during day time, at Tunduma Police Station within Momba district, Songwe region, the appellant was found by one Wilium Peter in unlawful possession of one python valued at T.shs. 774,000/-. He was found guilty and sentenced to a fine of T.shs. 7,740,000/- or 20 years imprisonment in default.



Aggrieved by that decision he filed the appeal at hand on six grounds. However, on the date of hearing, the respondent, through his counsel, Mr. Davis Msanga, learned state attorney, raised a legal issue concerning improper conviction entered by the trial court. The parties therefore had to address the Court first on the issue raised.

Mr. Msanga made a brief submission to the effect that the trial court never complied with the law in entering the conviction. He submitted that no offence or law was stated in the conviction rendering the judgment defective. In the premises he was of the view that there is no proper judgment for this Court to entertain on appeal. On the way forward, he contended that the only remedy available is for the case file to be remitted back to the trial court for retrial.

On his part, the appellant had nothing to address the Court. He left everything to the Court to decide. He did so for the issue being legal and was unrepresented.

As argued by the learned state attorney, the trial court did not enter conviction as required under the law. At page 7 of the judgment the trial Magistrate stated:

*"The court found therefore that all two questions above answered affirmative and consequently here is the conviction of the accused person." (sic)*



Under **Section 312(2) of the Criminal Procedure Act, Cap 20 R.E. 2002**, the conviction entered by the court is required to include the offence in which the accused is convicted with and the specific provision of the law in which the offence convicted upon is provided. The Section specifically provides:

*"In case of a 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."*

Considering the conviction entered by the trial magistrate in the case at hand, as quoted earlier, I agree with Mr. Msanga that it has not adhered to the requirements of the law as provided under section 312(2) cited above and therefore improper. This position has also been set in a number of cases by the Court of Appeal. In the case of **Kelvin Myovela vs. The Republic**, Criminal Appeal No. 603 of 2015 (unreported) for example, the CAT, at page 5 stated:

*"It is not sufficient to find an accused guilty as charged. Failure to enter a conviction renders a judgement invalid. In fact, there is no valid judgement without a conviction having been entered, as it is one of the prerequisites of a valid judgement."*

At page 7 the CAT also stated:



*“Since in the instant case, the trial court did not enter a conviction, the judgement and the subsequent sentence were a nullity. Since they were a nullity there was nothing which the High Court could have upheld.”*

Apart from the decision of **Kelvin Myovela** (supra), there a number of other decisions from the Court of Appeal which have stressed on this point. These include: **Aman Fungabikasi vs. Republic, Criminal Appeal no. 270 of 2008; Shabani Iddi Jololo and three others vs. Republic, Criminal Appeal no. 200 of 2006; and Hassan Mwambanga vs. Republic, Criminal Appeal no. 410 of 2013** (all unreported). In all these cases the Court stated that the failure of the trial court to enter a conviction is a fatal and incurable irregularity. It renders the purported judgment and imposed sentence a nullity and thus the same cannot be upheld by the High Court in the exercise of its appellate jurisdiction. (See also, **George Patrick Mawe & 4 others vs. Republic, Criminal Appeal no. 203 of 2011 and John s/o Charles vs. Republic, Criminal Appeal no. 190 of 2011**(unreported)).

Following such defect in the trial judgement, the only remedy available is to remit the case file to the trial court for it to enter a conviction in accordance with the law before passing a sentence. (See, **Kelvin Myovela** (supra) at page 7). I therefore hereby order for the case file to be remitted to the trial court for a proper judgement to be composed. I as well hereby instruct the trial court the following:

1. The trial court should compose a legally acceptable judgement by including a proper conviction based on the same evidence

adduced in court during trial. The judgement should comply with **sections 235(1) and 312(2) of the Criminal Procedure Act, Cap 20 R.E. 2019;**

2. The trial court file should be returned to the trial court to comply with the above instructions;
3. The appellant shall remain in custody and should be returned to the trial court for proper conviction by the trial magistrate or another magistrate in case the trial magistrate is no longer at the trial court; and upon compliance with the above instructions, the appellant may wish to lodge his appeal afresh;
4. The time to appeal shall commence from the date when a proper judgement of the trial court is pronounced to the accused person/appellant;
5. For the interest of justice, the date of sentence of the accused shall remain the same date as he was put under confinement on the first time;
6. The new judgement shall be completed within thirty (30) days from the date of this ruling.

Order accordingly.

  
**L.M. MONGELLA**  
**JUDGE**  
**27/04/2022**

Dated at Mbeya on this 27<sup>th</sup> day of April 2022.

  
**L. M. MONGELLA**  
**JUDGE**

**Court:** Ruling delivered at Mbeya in Chambers on this 27<sup>th</sup> day of April 2022 in the presence of the Appellant, appearing in person, and Mr. Davis Msanga, learned State Attorney for the Respondent.

  
**L. M. MONGELLA**  
**JUDGE**

**Court:** Right of Appeal to the Court of Appeal has been duly explained.

  
**L. M. MONGELLA**  
**JUDGE**

**27/04/2022**

