

IN THE HIGH COURT OF TANZANIA

DODOMA SUB- REGISTRY

AT DODOMA

DC. CRIMINAL APPEAL NO. 142 OF 2023

(Arising from Criminal Case No. 25 of 2022 of Kondoa District Court at Kondoa)

FAJIRI ISSA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

4th & 25th April, 2024

MUSOKWA, J.

The brief background to this appeal is narrated as follows: it is alleged that on 10th August, 2021 at Kikore Village, within Kondoa District in Dodoma Region, the appellant had sexual intercourse with the victim, a girl of 14 years of age. The appellant was charged and convicted of the offence of rape contrary to sections 130 (1) & (2) (e); and 131 (1) of the Penal Code, Cap. 16 R.E. 2022 (Penal Code). Being aggrieved with the decision of the trial court, the appellant has preferred the instant appeal. The grounds of the appeal will not be reproduced as the appeal was not disposed on merits.

On the date scheduled for hearing, the appellant was unrepresented while the respondent was represented by learned state attorneys, namely Ms. Victoria Njau and Ms. Margreth Tlegray. Before commencing with the submissions, Ms. Njau, state attorney, sought leave of the court to submit on an apparent error on the face of the records. Upon being granted leave, Ms. Njau submitted that the respondents had observed an anomaly in the contents of the judgment.

Proceeding further, Ms. Njau averred that the judgment was not composed in accordance with the requirements of the law as provided under section 312 (2) of the Criminal Procedure Act, Cap. 20, R.E. 2022 (CPA). The cited section provides for necessary contents of a judgment. The learned state attorney asserted that the law requires the judgment to contain the offence to which the accused has been convicted of, including the sentence thereof. Ms. Njau prayed the court to refer to page 9 of the typed judgment, at the last paragraph, pointing out that in composing the judgment, the trial court only cited the provision of the law under which the appellant had been convicted. However, the said judgement erroneously omitted to indicate the applicable sentence.

In the circumstances, Ms. Njau submitted that the remedy is for this court to remit the case file to the trial court and the honourable magistrate who adjudicated the matter be directed to compose a proper judgment that is in compliance with section 312 (2) of CPA. Thereafter, upon the appellant being properly sentenced, the hearing of the appeal will resume before this court.

The appellant was brief in response to the issue before the court. The appellant prayed the court to determine the issue in his favour, considering that the error had been made by the trial court and was not the result of any fault on his part. Further, he prayed the court to consider the time he has been in custody and accordingly, to determine the matter in the interests of justice.

After examination of the contested anomalies in the judgment, I agree with Ms. Njau that the judgment erroneously omitted to indicate the applicable sentence. 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]*

Looking on page 09 of the typed judgment of the trial court, it is recorded as follows:

"...In the view of the circumstances therefore, I find the accused guilty of the offence he stands charged and deserves to be convicted as I hereby do under section 130(1) (2) (e) and 130 (1) of the Penal Code (Cap 16 R.E 2022)."

*Sign:
F.A Kahamba, SRM
11.09.2023*

Clearly, the judgment quoted above does not indicate the punishment which is a necessary ingredient of a valid judgment. Indication of the sentence on page 43 of the typed proceedings is not sufficient for the purposes of section 312(2) of the CPA which is coached in mandatory terms. Thus, omission to indicate the sentence in the judgment is a fatal and incurable irregularity. Accordingly, I quash the purported judgment dated 11th September, 2023 (F.A Kahamba, SRM). 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 proper judgment expeditiously in compliance with section 312(2) of the CPA. Meanwhile, the appellant shall remain in custody and will be summoned by the trial court on the date of delivery of a proper judgment. In case the appellant wishes to appeal afresh, the time to appeal shall commence from

the date when a proper judgment of the trial court will be pronounced to the appellant. Finally, for the interests of justice, the sentence of the accused shall start from 11th September, 2023 being the date that conviction was entered, and further considering that the irregularity was prompted by the trial court.

It is so ordered.

Right of appeal explained.

DATED at **DODOMA** this 25th day of April, 2024.



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

I.D. MUSOKWA
JUDGE

Ruling delivered in the presence of the appellant and in the presence of Ms. Tlegray, learned state attorney for the respondent.



A handwritten signature in black ink, identical to the one above, appearing to read "I.D. Musokwa".

I.D. MUSOKWA
JUDGE