

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: MBAROUK, J.A., LUANDA, J.A., And MUSSA, J.A.)

CRIMINAL APPEAL NO. 567 OF 2015

**1. FADHILI JUMA }
2. JAPHET DANIEL }APPELLANTS**
VERSUS
THE REPUBLIC..... RESPONDENT

**(Appeal from the conviction and sentence of the High Court
of Tanzania at Arusha)**

(Mwaimu, J.)

Dated 29th day of July, 2015

in

Criminal Session No. 25 of 2014

JUDGMENT OF THE COURT

12th & 15th February, 2016

LUANDA, J.A.:

The above named appellants and another one, who was acquitted, were charged in the High Court with murder. The two appellants were convicted as charged and each was sentenced to suffer death by hanging. Aggrieved by the finding and sentence of the High Court, they have preferred this appeal in this Court.

In this appeal the 1st appellant (Fadhili Juma) was represented by Mr. Boniface Joseph, learned advocate; the 2nd appellant (Japhet Daniel) was represented by Mr. Ipanga Kimaay, learned counsel and the respondent/Republic was represented by Ms Twide Mangula, learned Senior State Attorney assisted by Mr. Charles Kagirwa, learned State Attorney.

Before we went to the merits of the appeal, the Court wished to satisfy itself as to whether the learned trial Judge sufficiently summed up the case to the assessors to enable the High Court to arrive at a just decision as is provided under s. 298 (1) of the Criminal Procedure Act, Cap. 20 R.E 2002. Having carefully read the summing up notes we did not see the trial learned Judge to have addressed the assessors the ingredients of the offence of murder especially the question of malice aforethought. Further, he did not tell them as to the set of evidence tendered in the prosecution case i.e whether direct or circumstantial and its legal requirement. Furthermore it is also not in the summing up notes the legal implication of the extra judicial statements of the appellants. Last but not

least the learned trial judge did not summarize the defence case at all. So the assessors were unable to say whether or not the defence case had raised any doubt in the prosecution case.

Mr. Boniface in the first place appreciated to the observation made by the Court. He agreed that the learned trial Judge did not sufficiently summed up the case to the assessors. In terms of s. 265 of the Criminal Procedure Act, Cap. 20 R.E. 2002 (the CPA) it cannot be said the trial was conducted with the aid of assessors, he charged. Since the assessors did not fully participate in the decision of the Court, the proceedings in terms of s. 4 (2) of the Appellate Jurisdiction Act, Cap. 141 (the Act) should be declared a nullity and a fresh trial to be conducted. Mr. Ipanga and Ms. Mangula joined hands with Mr. Boniface. We need not repeat what they had said.

Section 265 of the CPA stipulates in mandatory terms that all trials before the High Court must be conducted with aid of assessors. After both sides had closed their cases, the judge is required to sufficiently sum up

the case to the assessors. The opinions of assessors can be of great value and assistance to a trial judge but only if they fully understand the facts of the case before them in relation to the relevant law. If the law is not explained and attention not drawn to the salient facts of the case, the value of assessors' opinion is correspondingly reduced. (See **Washington s/o Odingo v. R.** (1954) 21 EACA 392; **Andrea and Another v. R.** (1958) EA 684 **Augustino Lodaru v. R.**, Criminal Appeal No. 70 of 2010 (unreported)).

In our case, we have seen that the learned trial judge insufficiently summed up the case to the assessors. The assessors were not informed properly in vital points to enable them give their opinion. The trial cannot be said to have been aided by assessors. (See **Tulibuzya Bituro v. R.** [1982] TLR 264). Failure to do so renders the entire proceedings a nullity. We declare so.

Exercising our revisional powers of the Court as provided under s. 4 (2) of the AJA, we quash the conviction, set aside the sentence of death.

We order the appellants be tried *de novo* before another judge and another set of assessors.

Order accordingly.

DATED at **ARUSHA** this 13th day of February, 2016.

M. S. MBAROUK
JUSTICE OF APPEAL

B.M. LUANDA
JUSTICE OF APPEAL

K.M. MUSSA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL