

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: MKUYE, J.A., KOROSSO, J.A. And MAKUNGU, J.A.)

CRIMINAL APPEAL NO. 692 OF 2020

SIJAONA MKWENJI @ FRANK.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Appeal from the Judgment of the High Court of Tanzania
at Dodoma**

(Hon. Mansoor. J)

dated the 25th day of November, 2020

in

Criminal Appeal No. 107 of 2020

RULING OF THE COURT

30th November & 7th December, 2022

MAKUNGU, J.A.:

The appellant, Sijaona Mkwenji @ Frank appeals from the Judgment of the High Court of Tanzania Dodoma Registry, confirming the conviction of the appellant, earlier entered by the District Court of Dodoma in Dodoma. Before that court, the appellant faced a charge of rape under section 130 (1) and (2) (e) of the Penal Code [Cap 16 R. E. 2002 now R. E. 2022] (the Penal Code). It was alleged that on 24th May, 2019 at Handali Village within Chamwino District in Dodoma Region the appellant had carnal knowledge of a six-year-old girl (the

victim). The appellant was, subsequent to the conviction, sentenced to life imprisonment.

Aggrieved by both conviction and sentence, he appealed to the High Court where his appeal was dismissed, and this is his second appeal.

Before us, the High Court is faulted on a total of eleven (11) grounds, that is, four grounds in the initial memorandum of appeal and other seven grounds in the supplementary memorandum of appeal presented on the hearing date. However, for reasons that will be obvious in due course, we shall not reproduce the grounds in this ruling.

At the hearing of the appeal, the appellant appeared in person, unrepresented. He stood by his grounds of appeal which he urged the Court to find meritorious enough to allow the appeal. He had nothing in elaboration reserving the right to rejoin after hearing submissions from the respondent Republic should that be necessary. On behalf of the respondent Republic, Mr. Ofmedy Mtenga, learned Senior State Attorney assisted by Ms. Miyango Kezilahabi and Mr. John Kidando, learned State Attorneys, appeared resisting the appeal. It was Mr. Mtenga who took the floor presenting his submissions in reply for the respondent.

Prior to commencement of hearing on merit, Mr. Mtenga submitted that the proceedings of the trial court were tainted with irregularities as the trial magistrate did not append his signature after recording evidence of PW1, PW2 and PW3. He contended that the omission rendered the entire proceedings irregular and vitiated the authenticity of the recorded evidence. He took us through the pages (PP 14, 15 and 17 of the record of appeal) in which the respective testimonies of PW1, PW2 and PW3 appear drawing our attention to specific points that the trial magistrate ought to have appended his signature, but did not. Failure to do so, the trial magistrate contravened the requirement under section 210 (1) (a) of the Criminal Procedure Act, Cap. 20 R.E. 2022 (the CPA), he added. He referred us to the case of **Mohamed Nuru Adam and 6 others v. Republic**, Criminal Appeal No. 230 of 2019 (unreported). He submitted that in that case, the Court found the evidence unauthentic thus, a nullity and invoked its revisional powers under section 4 (2) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019 (AJA) to nullify the proceedings of the trial court, quash the judgment and conviction and set aside the sentence, meted out to the appellant therein. The Court further ordered for a retrial of the said case. He invited us to take similar position to order retrial of the case at hand.

In response, the appellant as a lay person did not have much to say. He left the matter to the Court to decide.

On our part, we have thoroughly studied the proceedings of the trial court particularly from 16/8/2019 when the trial court started to record the evidence, and we have observed and noted that indeed no signature of the trial magistrate was appended after recording the evidence of Severina Nason Ndahani (PW1), Hilda Nason (PW2) and Harold Mdachi (PW3). The learned Senior State Attorney was therefore right that the trial magistrate did not sign at the end of any of the witnesses' evidence. He is equally right, as to the appropriate remedy he proposed, because where a judicial officer recording evidence in a judicial proceeding omits to append his signature after recording it; he commits an error that vitiates the proceedings rendering them a nullity. Where the evidence on record is not signed by the judicial officer who recorded it as such, the evidence is short of authenticity and cannot form part of the court record. That is the line of reasoning this Court adopted in **Yohana Mussa Makubi and Abubakar Ntundu v. Republic**, Criminal Appeal No. 556 of 2015 (unreported), where it held:

*"We are thus satisfied that **failure by the Judge to append his or her signature after taking down the evidence of every witness is an incurable***

irregularity in the proper administration of criminal justice in this country. The rationale for the rule is fairly apparent as it is geared to ensure that the trial proceedings are authentic not tainted. Besides, this emulates the spirit contained in section 210(1) of the CPA and we find no doubt in taking inspiration therefrom."
[Emphasis added].

Other decisions in which the above position has been adopted and upheld as the law on the subject in this jurisdiction include **Chacha Ghati Magige v. Republic**, Criminal Appeal No. 406 of 2017, and **Mhajiri Uladi and Another v. Republic**, Criminal Appeal No. 234 of 2020 (all unreported)

The significance of appending a signature to the evidence after recording it is also to positively affirm that indeed the evidence was recorded by an appropriate magistrate or judge that purported to have recorded it, see - **Richard Meboloki v. Republic**, [2000] TLR 90.

We are therefore satisfied that, as the evidence of three witnesses in this case were not appended with the signature of the trial magistrate, the same does not constitute the record of the court or to put it in a better perspective, the unsigned evidence is no better than evidence that was not taken.

Consequently, in terms of section 4 (2) of the AJA, we nullify the proceedings of both the trial court and the High Court, quash the judgments of the trial court and of the High Court and set aside the orders thereof. Further to that, we order that the matter be remitted to the trial court for the same to be tried *de novo* before another magistrate. In the meantime, the appellant shall continue to be detained in prison as a remandee, pending his trial. It is further ordered that efforts should be made to expedite the trial.

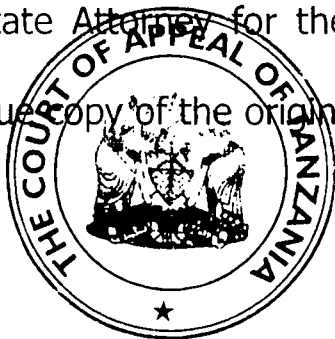
DATED at DODOMA this 6th day of December, 2022.

R. K. MKUYE
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

This Judgment delivered on 7th day of December, 2022 in the presence of the Appellant in person and Ms. Mwajuma Mkonyi, learned State Attorney for the respondent / Republic, is hereby certified as a true copy of the original.




R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL