

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CRIMINAL APPEAL NO. 134 OF 2017

(Originating from the District Court of Kiteto at Kibaya, Criminal

Case No. 191 of 2016)

HASSAN RAMADHAN.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGEMENT

5TH NOVEMBER, 2018

T. M. MWENEMPAZI, J.

In the trial court, the District Court of Kiteto, the appellant was charged with the offence of Armed Robbery contrary to section 287A of the Penal Code, Cap. 16 R.E.2002 whereby the particulars allege that the appellant on the 29th Day of November, 2016 at about 21:00 Hours at the Bus Stand area in Kibaya Village within the Kiteto District in Manyara Region did willfully and unlawfully steal cash money Tshs. 480,000/= the property of

one Ramadhani S/O Adam and immediately before such stealing he used force to obtain such money. The case was heard and 3 witnesses testified for the prosecution. There was only one defense witness, the appellant himself. The appellant was convicted and sentenced to serve a mandatory sentence under the law which is thirty (30) years imprisonment. He is aggrieved with the conviction and sentence hence this appeal against judgement, conviction and sentence of the District Court of Kiteto by Hon. E. D. Massawe-RM.

The appellant in his petition of appeal has raised three grounds of appeal, which are as follows: -

1. That, the learned trial Magistrate erred in law and fact by not finding that the charge sheet which was preferred against the appellant was defective.
2. That, the learned trial Magistrate erred in law and in fact in holding that the appellant was properly identified at the scene of crime on the alleged date of incident.
3. That, the learned trial Magistrate erred in law and misdirected himself by failure to accord due weight to the appellant's defence and decide the matter basing on the prosecution case its own.

The appellant prayed to be present during the hearing of the appeal and that the court allows the appeal by quashing the conviction and setting aside the sentence and letting the appellant at liberty.

At the hearing the appellant was unrepresented and the Republic was represented by Tusaje Samwel, learned State Attorney. When called upon to submit on his appeal, the appellant said he doesn't know how to read, but somebody at the prison has prepared notes for him; he prays the Judge to read and adopt the same as his submission on an appeal. The prayer was not granted. However, since almost all the grounds are based on law, the appellant was directed to listen to what the learned state attorney will submit and reply to the submission later if at all he will have anything to respond.

The learned State Attorney, in her submission submitted that the Republic supports an appeal by the appellant on the first ground which in essence is to the effect that the charge against the appellant was defective. For the easy of reference, I will reproduce its statement of offence and particulars of offence below: -

STATEMENT OF OFFENCE: Armed Robbery contrary to section 287A of the Penal Code, Cap. 16 R.E. 2002.

PARTICULARS OF OFFENCE:

HASSAN S/O RAMADHANI TAGALA charged on the 29th day of November, 2016 at about 21:00 Hours at Bus Stand area in Kibaya village within Kiteto District in Manyara Region did willfully and unlawfully steal cash money Tshs. 480, 000/= the property of one RAMADHANI S/O ADAM and immediately before such stealing did use force to obtain such money.

The learned State Attorney submitted that the charge is defective because it contravened the provisions of section 132 of the Criminal Procedure Act, Cap. 20 R.E.2002. The provision prescribes the form of the charge sheet. If we look at the Statement of offence the charging section is section 287A of the Penal Code, Cap. 16 R.E. 2002 as amended by the Written Laws (Miscellaneous Amendment) Act, No. 3 of 2011. The section under which the appellant was charged with reads as follows: -

*287A. A person who steals anything, and at or robbery immediately before or after stealing is armed with any dangerous or offensive weapon or instrument and **at or***

immediately before or after stealing uses or threatens to use violence to any person in order to obtain or retain the stolen property, commits an offence of armed robbery and shall, on conviction be liable to imprisonment for a term of not less than thirty years with or without corporal punishment."(emphasis is mine)

There must be the words in the particulars of offence showing that there was threat to use violence at or immediately before or after stealing to any person in order to obtain or retain the stolen property. In the charge sheet read by the prosecution it is shown that the accused used force to take money. It doesn't show whether the weapon was used and was directed to who. The charge has not shown to whom the threat to use violence was directed or to whom that weapon was used.

Such omission renders the charge defective and it cannot be cured under section 388(1) of the Criminal Procedure Act, Cap. 20 R.E.2002. She cited the case of ***Ally S/O Idd versus The Republic, Criminal Appeal No. 328 of 2015, Court of Appeal of Tanzania at Arusha (unreported)***, the court in that case held that: -

"the particulars of the offence of robbery must not only contain the violence or threat but also the person on whom the actual violence or threat was directed"

The learned State Attorney submitted that since the defect is incurable this court should quash the decision of the trial court and set aside the sentence and the appellant should be set free. The appellant could not add anything on the same reasons that he does not know how to read.

I have read the proceedings and also heard the submission of the learned State Attorney; indeed, the prosecution had a defective charge read over to the accused(appellant) as it can be appreciated above. The same does not provide enough information in the particulars of offence for the accused to know and appreciate the nature of the offence he is charged with.

In absence of the words in the particulars of offence clearly showing to whom the threat to use violence was directed, the accused was not properly informed of the offence with which he was charged. According to the provision quoted, threat to use violence must be directed to a person. This in principle must be made clear to the person charged when

answering allegations levelled against him in court. Section 132 of the Criminal Procedure Act, Cap. 20 R.E. 2002 provides that: -

“Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.”

*It was also held in the case of of **Isidori Patrice vs. The Republic**, Criminal Appeal No.224 of 2007 Court of Appeal of Tanzania at Arusha(unreported) that: -*

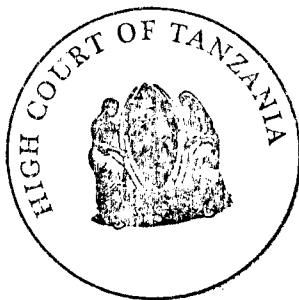
“the principle has been that the accused person must know the nature of the case facing him. This can be achieved if a charge discloses the essential elements of an offence... that absence of disclosure renders the nature of the case facing the accused not to be adequately disclosed to him which vitiates the need to give the accused a fair trial and enable him to prepare his defense.”

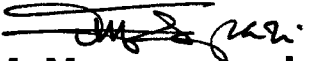
In the case of **Mussa Mwaikunda v. Republic** [2006] T.L.R.387 it was held that a charge which did not disclose any offence in the particulars

of offence was manifestly wrong and could not be cured under section 388 of the Criminal Procedure Act.

The case at hand has a charge sheet which does not disclose the offence the appellant was charged with in the particulars of offence. The law as pronounced in decided cases is clear, the charge was incurably defective. There is no other option but to quash the judgement of the trial court, set aside the sentence and the appellant should be set free immediately unless otherwise he is lawfully being held.

It is so ordered.




T. M. Mwenempazi

JUDGE

5TH NOVEMBER, 2018