IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: MWARIJA, J.A., MWAMBEGELE, J.A., And KEREFU, J.A.)

CRIMINAL APPEAL NO. 94 OF 2021

HALID MAULID .... APPELLANT

VERSUS

REPUBLIC .... RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania, at Dodoma)

(Nyembele, PRM – Ext. Juris.)

dated the 19th of November, 2020
in
Criminal Appeal No. 25 of 2020

....

JUDGMENT OF THE COURT

31st May & 4th June, 2021

MWAMBEGELE, J.A.:

The District Court of Kondoa convicted Halid Maulid, the appellant herein, together with another person going by the name of Farijala Hamisi @ Ntare who is not a party to this appeal, of one count of the offence of arson contrary to section 319 of the Penal Code, Cap. 16 of the Revised Edition, 2002. They were each sentenced to a conditional discharge; that they should not commit any offence in five months reckoned from the date of conviction. Aggrieved, the Director of Public Prosecutions appealed to

the High Court against the sentence and the trial court's order declining to order for compensation. The appeal was assigned to Hon. Nyembele, Principal Resident Magistrate with Extended Jurisdiction to entertain and hear it. The learned PRM (Ext. Juris.) having heard the appeal, partly allowed it. She found the sentence imposed by the trial court as being patently inadequate and thus enhanced it to a custodial sentence of five years. The ground in respect of the compensation order was dismissed. The appellant was aggrieved by the decision of the first appellate court. He therefore preferred an appeal to this Court on the following paraphrased grounds of grievance:

1. That the first appellate court erred in fact and law in enhancing the sentence to five years' imprisonment in respect of both respondents without specifying the law which empowered it so to do;
2. That the first appellate court erred in fact and law in failing to observe that the whole case against the appellant was framed due to the fact that the appellant residing in the same village

was arrested on 7th day of December, 2017 whilst the offence was committed on the 26th day June, 2016;

3. That the first appellate court erred in fact and law by failing to note that there was no sketch plan of the scene of crime produced or tendered in court to corroborate the evidence of the prosecution witnesses;
4. That the first appellate court erred in fact and law in failing to notice that no arresting person came to testify in court regarding the role of the appellant in the commission of the offence;
5. That the first appellate court erred in fact and law in failing to note that the purported commission of the crime was not supported by any independent or local leader such as the Village or Ward Executive Officer;
6. That the first appellate court erred in fact and law in failing to observe that the case against the appellant was fabricated; and
7. That the first appellate court erred in fact and law in the finding that the prosecution proved the case against the appellant beyond reasonable doubt.

When the appeal was placed for hearing before us, the appellant appeared remotely and without legal representation; he was linked to the Court from Isanga Prison in Dodoma via a video link; the Virtual Court facility of the Judiciary of Tanzania. The respondent Republic appeared through Mr. Harry Mbogoro, learned State Attorney.

When we called on the appellant to address us on his appeal, he opted to let the learned State Attorney respond to the grounds of appeal first. However, he reserved his right of rejoinder, need arising.

Rebutting, Mr. Mbogoro started his onslaught by submitting that, save for the first ground of appeal, all the grounds presented by the appellant surfaced in this second appeal for the first time; they were not dealt with by the first appellate court. Given that the new grounds are not based on points of law, the learned State Attorney urged us to ignore them. To buttress his proposition, he referred us to the position we took in our unreported decision in **Godfrey Wilson v. Republic**, Criminal Appeal No. 168 of 2018 in which we took the view that, unless they are on points of law, new grounds surfacing in the Court for the first time; not decided by the first appellate court will not be entertained.

With regard to the first ground of appeal which is a complaint to the effect that in enhancing the sentence from a conditional discharge to a jail term of five years, the first appellate court did not cite the section which empowers it so to do, the learned State Attorney submitted that the first appellate court had powers to enhance the sentence in terms of section 366 (1) (a) (ii) of the Criminal Procedure Act, Cap. 20 of the Revised Edition, 2019 (henceforth "the CPA"). The omission by the first appellate Court to cite the provision which bestows upon it the power to enhance the sentence, he submitted, was not fatal and did not prejudice the appellant in any way. The learned counsel thus submitted that the only remaining ground of complaint in this appeal had no merit.

In the light of the above submissions, the learned State Attorney implored us to dismiss the appeal in its entirety for want of merit.

In a short rejoinder, the appellant submitted that he was psychologically prejudiced by the failure by the first appellate court to state the provision which empowers it to enhance the sentence. Without going into much details, the appellant pleaded with us that he was a lay person who needed consideration by the Court on his ordeal. He also stated from

the bar that he was framed; the charges against him were purely fabricated.

We have considered the grounds of appeal in the light of the submissions by the parties to this appeal; the appellant on the one hand and Mr. Mbogoro on the other. We feel pressed to hasten the remark that the law is settled in this jurisdiction that, on second appeal, this Court will only look into matters which came up in the first appellate court and were decided. The Court has no jurisdiction to decide on matters which were not raised nor decided by the High Court or subordinate court with extended jurisdiction on first appeal, unless they are points of law. That this is the law has been held in a string of decisions of the Court – see: **Asael Mwanga v. Republic**, Criminal Appeal No. 218 of 2007, **Mohamed Saidi v. Republic,** Criminal Appeal No. 9 of 2014, **Damiano Qadwe v. Republic**, Criminal Appeal No. 317 of 2016, **Ally Ngozi v. Republic**, Criminal Appeal No. 216 of 2018, **Kibuna Makuri @ Kimwi v. Republic**, Criminal Appeal No. 404 of 2017 (all unreported), to mention but a few.

The facts of the present appeal fall in all fours with those in **Damiano Qadwe** (supra). In that case, like in the present, the appellant was convicted by the trial court of the offence of rape and sentenced to two years' imprisonment. The High Court, invoking its revisional powers, enhanced the sentence to a prison term of thirty years. The appellant was aggrieved by the enhancement of the sentence by the High Court and lodged an appeal to the Court. The memorandum of appeal sought to challenge the conviction and sentence of the trial court. In resolving the matter, we reproduced the following excerpt from our previous decision in **Asael Mwanga** (supra) which we think merits recitation here:

> *"Now, all those grounds, whatever may be their merits, should have been argued in the High Court had the appellant lodged an appeal to that Court. In the event the High Court failed to discuss and decide them satisfactorily, the appellant could resort to this Court.* ***What the appellant is now trying to do is to turn this Court to the first appellate court after the judgment of the District Court*** *....*
>
> *We must, therefore, decline to turn this Court into a first appellate court from decisions of the District*

Court. In the result, we express no opinion on the grounds of appeal which the appellant brought to this Court."

[Emphasis supplied].

And to clinch it all, we also wish, at this juncture, to recall what we stated in **Mohamed Saidi** (supra) and restated in **Damiano Qadwe** (supra) when confronted with an akin situation:

> *"We wish to stress the obvious that the appellate jurisdiction of this Court is to hear appeals which result from the decisions of the High Court and/or from the subordinate courts with extended jurisdiction. This is in terms of the provisions of Article 117 (3) of the Constitution of the United Republic of Tanzania of 1977 Cap. 2 of the Revised Edition, 2002 ..., and section 4 (1) of the AJA [the Appellate Jurisdiction Act]."*

In the matter at hand the appellant was convicted by the trial court and sentenced accordingly. He did not appeal to the High Court to complain of his conviction. Neither did he appeal against the sentence. It is the Director of Public Prosecutions who did. In this state of affairs, it is presumed that the appellant was satisfied with his conviction and the

attendant sentence meted out to him by the trial court. In the circumstances, he cannot be legally heard to complain before us that the conviction was unfounded. What he is entitled to complain of is the sentence enhanced by the High Court, the subject of the first ground of appeal.

On the authority of the decisions of the Court cited above, we find and hold that grounds two through to seven of the memorandum of appeal, are new and, given the fact that they are not based on points of law, we refrain from entertaining them.

We now turn to consider the only remaining ground; the first ground of appeal whose gist, as already alluded to above, is that the first appellate court erred in fact and law in enhancing the sentence without indicating the specific provision of the law which empowers it to do so. On this complaint, we, right away, agree with Mr. Mbogoro that the complaint is unmerited. As submitted by the learned State Attorney, and to our mind rightly so, the learned Principal Resident Magistrate with Extended Jurisdiction had powers to enhance the sentence in terms of section 366

(1) (a) (ii) of the CPA. For easy reference, we take the liberty to reproduce the relevant part of the section:

> *"**366.**-(1) At the hearing of the appeal, ... the court may ...*
>
> *(a) in an appeal from a conviction-*
>
> *(i) N/A*
>
> *(ii) alter the finding, maintaining the sentence or, with or without altering the finding,* ***reduce or increase the sentence****; or*
>
> *(iii) N/A"*
>
> [Emphasis supplied].

With the foregoing provision in mind, we agree with Mr. Mbogoro that the learned Principal Resident Magistrate with Extended Jurisdiction had such powers under section 366 (1) (a) (ii) of the CPA. We also agree with him that failure to state the provision of the law which bestowed powers upon her to enhance the sentence was not fatal and did not at all prejudice the appellant. The appellant's complaint in the only remaining ground of appeal is therefore unmerited and dismissed.

For the reasons we have assigned, we find and hold that this appeal is unmerited. It stands dismissed entirely.

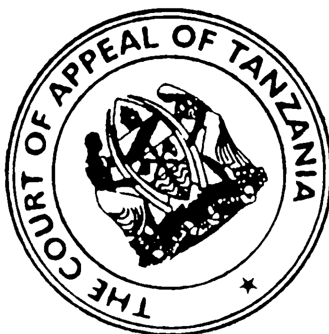
DATED at **DODOMA** this 3rd day of June, 2021.

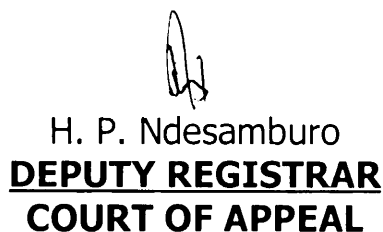
A. G. MWARIJA
JUSTICE OF APPEAL

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

This judgment delivered this 4th day of June, 2021 in the presence of the Appellant in person connected through video conferencing facility linked to Isanga Prison and Ms. Janeth Mgoma, learned State Attorney for the Respondent / Republic, is hereby certified as a true copy of the original.





H. P. Ndesamburo
DEPUTY REGISTRAR
COURT OF APPEAL