

TANZANIA / JUDGMENT

# Peter Shija Omnibus Sentence Edited

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA DODOMA SUB REGISTRY AT  
DODOMA DC. CRIMINAL APPEAL NO. 1301 OF2024 (Arising from the Judgment of Chemba  
District Court in Economic Case No. 06 of 2022) PETER SHIJA.....  
APPELLANT VERSUS THE REPUBLIC.....RESPONDENT

## JUDGMENT

Date of Last Order: 24th July, 2024 Date of Judgment: 16th August 2024 MASABO, J:- The appellant herein was arraigned before the District Court of Chemba for two counts of economic offences. In the first count, he was charged of occasioning loss to a specified authority contrary to paragraph 10(1) of the first Schedule read together with Section 57(1) and 60(2) of the Economic and Organised Crime Control Act, Cap 200 R.E 2019 and in the second, he was charged of interfering with necessary service contrary to paragraph 12 of the first schedule to and section 57(1) and 60(2) of the Economic and Organised Crime Control Act Cap 200 R.E 2019. As per the record, it was alleged that on 19th June 2022 at Khubunko Village, within Chemba District in Dodoma Region, the appellant was found in unlawful possession of 17 pieces of galvanised steel pipe and Page 1 of 6 4 sockets all valued at TZS 1,253,840/= property of the Rural Water Supply and Sanitation (RUWASA). After the charge was read over to the appellant and after being invited to plea, he denied his involvement in all the counts. The case proceeded to a full trial where the prosecution had six (6) witnesses. The appellant defended himself on oath as DW1. At the end of the trial, the trial court having assessed the evidence before it, found him guilty and convicted him of both counts and subsequently sentenced him to serve a jail term for five years. The appellant was disgruntled. He has filed his petition of appeal based on the following four grounds. One, that, the prosecution did not prove the case beyond reasonable doubt. Two, the conviction is based on procedural irregularities. Three, his defence evidence was not considered. Four, the trial court erred in convicting the appellant on the weakness of the defence instead of the strength of the prosecution evidence. When the appeal came for hearing, the appellant appeared in person and Ms. Prisca Kipagile, learned State Attorney appeared for the Respondent Republic. Invited to address the court in support of the appeal, the appellant, while supporting his first ground of appeal, submitted that the case was not proved as the witnesses who testified did not arrest him. The militia, the police jamii, and the Ward Executive Officer for Makorongo Ward who allegedly arrested him did not come to testify. These, he argued, were important witnesses and ought to have testified in court. On the second ground, the appellant made no

submission. He left it to the court to look into the proceedings and Page 2 of 6 ascertain the irregularities. On the third ground, he submitted that his defence was not considered by the trial court. He concluded with a prayer that the court look into the proceedings, positively consider his appeal, and allow it. Resisting the appeal, Ms. Kipagile consolidated the first and fourth grounds of appeal. She then submitted that the case was properly decided. The prosecution proved its case through the testimonies of five witnesses and 6 exhibits. PW3 found the appellant while in possession of iron bars and water pipes. The appellant was the one who stopped him and asked him to take him to Donsee village. The incident was reported to the village chairman (PW2). When arrested, the appellant was found in possession of the stolen items which were seized. The appellant was interrogated whereby he confessed to the crime as seen in exhibit P4 whose admission was not anyhow disputed. She argued that the confession contained in Exhibit P4 was strong evidence because, as stated in the case of *Tuwamoi vs Uganda*

(1967) EA at page 91 and *Richard Lubilo and Another vs Republic*, Criminal Appeal No. 10/1995 [2001] TZCA 29 TanzLII, the confession given voluntarily by an accused person is the best evidence. Thus, in this case, Exhibit P4 was the best evidence. Moreover, Exhibit P4 was supported by Exhibit P1 which is the certificate of seizure, showing the number of the pipes which were also received for admission with no objection. Thus, the case was proved. On the second ground, it was submitted that there were no irregularities worth the nullification of the judgment. The court was conferred with Page 3 of 6 jurisdiction to entertain it. All parties were heard. The defence was heard and the judgment was composed in due regard to the evidence of both parties. Submitting on the 3rd ground, Ms. Kipagile argued that the prosecution's case was proved as the evidence adduced by the prosecution was sufficient to convict him. The appellant rendered his evidence but having weighted such evidence, the court found the prosecution's evidence heavier and to have proved the case as a result the appellant was convicted and sentenced. The appellant's complaint is with no merit and his appeal should be dismissed for want of merit. In rejoinder, the appellant argued that he confessed to the crime after being brutally tortured. After considering the submissions above and the lower record which I have thoroughly scrutinized, I will now proceed to determine the four grounds of appeal. I will proceed mindful that the ultimate question to be answered in the end, is whether the prosecution proved its case to the required standards. I will also proceed mindful that this is a first appeal and this court by being a first appellate court is vested with enormous powers to reappraise the evidence on record and derive a conclusion on whether the trial court was correct in holding that the case against the appellant was proved. In the light of these principles, I will now move on to the ground of appeal starting with the second ground. The appellant's major complaint on this ground is that the trial court proceedings were marred by Page 4 of 6 irregularities and his conviction was based on such irregularities. Surprisingly, no specificity is given as to such irregularities and the appellant did not amplify them in his submission such that, the respondent's counsel had nothing to respond to. She just responded generally that there are no irregularities whatsoever in the proceedings. On my side, while perusing the record to see whether

there are irregularities with the reversal of the trial court record, I have observed that, there a glaring irregularity in the sentencing. As stated above, the appellant was charged with two counts and he was convicted of both counts. Thus, it was expected that he would be sentenced for each respective count. On the contrary, the trial court passed an omnibus sentence of imprisonment for five years without ascribing the said sentence to the respective counts. Thus, it is not certain whether the sentence of five years imprisonment is in respect of the first and second counts. Under the premises, the sentence is an omnibus and legally untenable as it is inconsistent with the law against omnibus sentences which requires that where a person is convicted of more than one count, he should be sentenced separately on each of the counts and instead of the omnibus sentence. See the case of Saidi Kigodi @Side vs. Republic Criminal Appeal No. 281 of 2009 [2011] TZCA 137 TanzLII where Court held that: "The learned judge passed an omnibus sentence of death. We are mindful of the decision in the case of Agnes Doris Liundi versus Republic (1980) TLR 46. In that case the appellant was convicted on Page 5 of 6 three counts of murdering three of her children by poison. It was held among other things that –"The sentence of death should only have been passed on one count, the convictions on the other two events being allowed to remain in the record". Accordingly, I quash and set aside the conviction and remit back the case file to the trial magistrate for the appellant to be properly sentenced. Upon being properly sentenced, the appellant will be at liberty, if still aggrieved, to reinstitute his appeal with the same or more grounds including those related to the sentence in the event it will aggrieve him. DATED at DODOMA this 16th day of August 2024 J. L. MASABO JUDGE Page 6 of 6

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