

TANZANIA / JUDGMENT

rajabu abdallah mselemu vs republic 2014 tzca 165 30 june 2014

COURT
TZCADECIDED
30 June 2014

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE COURT OF APPEAL OF TANZANIA AT IRINGA CORAM: MSOFFE. J.A.. KAIJAGE, J.A., And MMILLA. 3.A. CRIMINAL APPEAL NO. 134 OF 2014 RAJABU ABDALLAH @ MSELEMU..... APPELLANT VERSUS THE REPUBLIC.....RESPONDENT (Appeal from the decision of Resident Magistrate's Court of Ruvuma at Songea) fDvansobera. PRM. Ext. Jurisdiction^ dated 28th day of October, 2013 in (D O Criminal Appeal No. 37 of 2013. JUDGMENT OF THE COURT 27th & 30th June, 2014 MMILLA. J.A.: The appellant, Rajabu Abdalla @ Mselemu is currently serving a term of 10 years in prison following his conviction on 19/3/2012 by the District Court of Songea before which he was charged with two offences; office breaking and stealing c/s 296 (a) and stealing c/s 265 both of the Penal Code. While he was sentenced to a term of 10 years in jail in respect of the first count, he was given a conditional discharge under section 38 of the Penal Code in respect of the second count of stealing that he desists from i committing any such kind of offence within a period of 6 months. He felt aggrieved and appealed to the High Court. Somehow, his appeal was heard and determined by W.P. Dyansobera, a Principal Resident Magistrate with Extended Jurisdiction (PRM Ext. Jurisdiction) who upheld conviction and sentence. Still aggrieved, he appealed to this Court. Before us, the appellant appeared in person, unrepresented. He had filed a memorandum of appeal that consisted of 7 grounds. On the other hand, the respondent Republic was represented by Ms. Tumaini Ngiluka, learned State Attorney. At the commencement of the hearing of the appeal, the Court suo m otu raised a jurisdictional issue relating to the validity of the transfer of the appeal to the PRM with Ext. Jurisdiction upon becoming obvious that there was nothing in the record to show that such transfer was actually done. When Ms. Ngiluka was asked to address us on this point, she conceded that there was no such transfer, therefore that there was no competent appeal before this Court. She invited us to invoke the provisions of section 4 (2) of the Appellate Jurisdiction Act Cap 141 of the Revised Edition, 2002 (the AJA) so that we may nullify the proceedings before the PRM with Ext. Jurisdiction to pave way to remit the record to the High Court for proper action. She observed however, that on reading the court record, she noticed that the prosecution had not proved the case against the appellant beyond reasonable doubt; also that both lower courts did not consider the defence case which she said was a fatal error. However, she left appellant's fate in the wisdom of this Court. We have carefully scanned the court record in an endeavour to find out if the appeal

was validly transferred to the PRM with Ext. Jurisdiction in terms of section 45 (2) of the Magistrates' Courts Act Cap 11 of the Revised Edition, 2002. We satisfied ourselves that nothing was in the record to clear that doubt, a finding which destined us to the conclusion that there was no valid transfer of that appeal to the PRM- Ext. Jurisdiction. That being the case, it is obvious that the proceedings before the PRM with Ext. Jurisdiction were a nullity, therefore that there is no valid appeal before us. Under normal circumstances, we would have ended there. However, in the peculiar circumstances of the present case, we take the rather unusual step of going a step further. The reason is clear that, after going through the court record, we found two glaring mistakes which indicate that justice 3 was, in the first place not done in the case, thus necessitating the Court to do something about it. In the first place, we have regrettably noted that the appellant's conviction was based entirely on the uncorroborated insufficient evidence of his accomplice who was the first accused before the trial court. There trial court ought to have looked for independent evidence capable of affording corroboration to the evidence of appellant's accomplice before relying on it. Since that was not done, it is obvious that it cannot be said that justice was done in the case. Secondly, as correctly submitted by Ms. Ngiluka, both lower courts did not take into consideration the appellant's defence case. As this Court has stated time and again, such omission constitutes a fatal error. To reiterate what has always been insisted in this regard, both courts below ought to have observed the well established principle of law that in writing a judgment, a court has to consider not only the evidence in support of one party in a case and completely ignore the evidence for the other party, however worthless it may appear - See Hussein Idd and Another v. Republic (supra), Ligwa Kusanja and others v. Republic, Criminal Appeal No. 113 of 1999, CAT and Stephen John Rutakikirwa v. Republic, Criminal Appeal No. 78 of 2008, CAT (both unreported). In a fit case, we would have allowed the appeal, but as aforesaid, we have no valid appeal before us. However, for the peculiar nature of this case as aforesaid, and in the interests of substantive justice, for reasons we have given above, we invoke the powers obtaining under section 4 (2) of the AJA in terms of which we nullify the proceedings before the PRM with Extended Jurisdiction as well as the trial court and set aside the sentence and the order for compensation. We order appellant's release from prison unless otherwise lawfully held. DATED at IRINGA this 30th day of June, 2014. J. H. MSOFFE JUSTICE OF APPEAL S. S. KAIJAGE JUSTICE OF APPEAL B. M. MMILLA JUSTICE OF APPEAL I certify that this is a true copy of the original. DEPUTY REGISTRAR COURT OF APPEAL

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/269400/source_file/rajabu-abdallah-mselemu-vs-republic-2014-tzca-165-30-june-2014.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/rajabu-abdallah-mselemu-v-the-republic-jurisdiction-tzca-2014>

Prepared on 12 October 2026 · Esheria