

IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

DC. CRIMINAL APPEAL NO. 103 OF 2021

*(Originating from the judgment of the Resident Magistrate Court of Singida in
Criminal Case No. 1 of 2020 dated 24th August, 2021)*

SALIMU MOHAMED SUNGI.....APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

Judgment: 27.07.2023

HASSAN, J

The appellant Salimu Mohamed Sungi stand charged with two offences which are: **One**, corrupt transaction contrary to section 15 (1) (a) and (2) of the Prevention and Combating of Corruption Act, No. 11 of 2007. In brief, the accused person was alleged to have solicited corruption of 50,000/= from Abdallah Shabani as an inducement to favour him in his land dispute before community service committee. **Two**, that the accused person has committed a corrupt transaction contrary to section 15 (1) (a) and (2) of the Prevention and Combating of Corruption Act, No. 11 of 2007. In brief, in this count the accused person being a

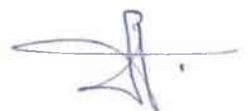


village executive was alleged to have received corruption of 50,000/= from Abdallah Shabani as an inducement to favour him in his land dispute before community service committee.

At the end of the trial, the appellant was convicted for both offences jointly, and thereafter, he was sentenced to pay a fine of 500,000/= as collective punishment for two offences. Aggrieved by the decision of the trial court, the appellant appeared before this court for redress. His petition of appeal loaded with seven (7) grounds of appeal. However, for the reason which will be apparent as I go along, I will spare my energy for not dictating them.

Before this court, the appellant appeared in person unrepresented by counsel, whereas, Mr. Leonard Chalo, learned Senior State Attorney stands for the respondent Republic, in assistance of Ms. Prisca, also learned State Attorney.

During hearing, before the appellant was invited to present his grounds of appeal, the learned Senior State Attorney approached the court judiciously with statement that they are readily supporting the appeal, and he pleaded to start his submission based on what he has observed from the record of proceedings.



Knowing his role as an officer of the court, Mr. Chalo's request was sanctioned. Submitting on the same, he kickstarted by attacking the judgment from the trial court. On that, he submitted that while he was perusing the proceedings, he observed that the trial magistrate flawed for convicting the appellant by combining two offences together without specifying the provision of the law of which the said conviction is borne.

Mr. Chalo contended further that, for so doing, the trial magistrate violated the provision of section 312 (2) of Criminal Procedure Act, [Cap. 20 R. E 2019] for not specifically showing the applicable law of which the conviction was derived from. Upon senior state attorney's view, that irregularity is fatal and it renders the judgment being defective.

On the other hand, the appellant had no more to add apart from supporting what was submitted by the respondent counsel, except he further reiterated that, the appeal be allowed and conviction and sentence to be quashed.

On my part, having thoroughly going through the record, I find it obvious that, the trial magistrate had pronounced a combined conviction for two offences that the appellant stand charged. In its original dictum, the trial magistrate marked as follows:



"For the reasons stated above, I finalize my discussion by convicting the accused person for both counts as the same were proved by prosecution side beyond reasonable doubt."

At this juncture, I wish to cite the provision of section 312 (1) (2) of CPA, in order to observe what is mandatorily required for the trial magistrate while convicting the accused person. 312 (1) (2) of CPA provides:

"(1) Every judgment under the provisions of section 311 shall, except as otherwise expressly provided by this Act, be written by or reduced to writing under the personal direction and superintendence of the presiding judge or magistrate in the language of the court and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding officer as of the date on which it is pronounced in open court."

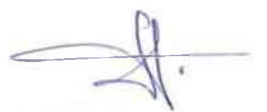


(2) In the case of conviction, the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted and the punishment to which he is sentenced."

Additionally, even in the sentence, the appellant received a collective punishment of 500,000/= or in default, he has to serve prison sentence of three years for both offences. Thus, one cannot separate as to the magnitude of punishment for each count. Again, the ambiguity is injurious to the appellant.

After I have pointed out defect in the judgment, and prescribed the law which oversee the requirements of a judgment, of which the accused person is convicted, I am therefore of respective view that, there is merit in the appellant's appeal. Section 312 (2) (supra) is coached with mandatory rule "shall", hence, non-compliance of it will definitely condense the judgment to become defective. As it stands, the appellant has never been convicted, and therefore, he should not suffer for nothing.

In the result, based on the submission from learned Senior State Attorney and my personal deliberation as above, I hereby allow the



appeal, quash conviction and set aside the sentence arrived by the trial court.

It is ordered.

DATED at **DODOMA** this 27th day of July, 2023.



S. H. HASSAN

JUDGE