

**IN THE HIGH COURT OF TANZANIA  
(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**CRIMINAL REVISION NO. 6 OF 2019**

(Original Criminal Case No. 105 of 2018 of the District Court of Dodoma  
District at Dodoma)

**THE REPUBLIC**

**VERSUS**

**1. HAROUN YASIN MMBAGA**

**2. TUMAINI NGOWI**

*7/2/2020 & 20/2/2020*

**RULING**

**MASAJU, J**

Before the District Court of Dodoma at Dodoma, Haroun Yassini Mmbaga and Tumaini Ngowi, the 1<sup>st</sup> and 2<sup>nd</sup> offenders respectively were charged with, tried and severally convicted of the offences of Forgery, Uttering False Documents, Obtaining Money by False Pretense and Unlawful Possession of Instruments for making Stamps. The said offences were in contravention of the relevant provisions of the Penal Code, [Cap 16]. The 1<sup>st</sup> offender was found guilty and convicted of three (3) counts of Forgery, three (3) counts of Uttering False Documents and one (1) count of Obtaining Money by False Pretense. The 2<sup>nd</sup> offender was found guilty and convicted of four (4) counts of Unlawful Possession of Instruments for

making Stamps. The judgment thereof which was composed and signed on the 3<sup>rd</sup> day of December, 2019 by the trial Senior District Magistrate, G.M. Pius who was by then on the retirement leave, was delivered in the trial Court on the 6<sup>th</sup> day of December, 2019 by the N.J. Tungaraja the Resident Magistrate. The original record of the said Judgment reveals that there had been a blank space for the would be sentencing hearing for purposes of sentencing recommendation and the mitigation thereof by the prosecution and the offenders respectively. The original record further reveals that there was no coram of the trial Court on the 3<sup>rd</sup> day of December, 2019 when the two offenders were convicted and sentenced. There had been a blank space titled thus, **"PREVIOUS CONVICTION"** and blank space titled thus, **"MITIGATION"** in respect of the 1<sup>st</sup> Accused and 2<sup>nd</sup> Accused then **SENTENCE** dated the 3<sup>rd</sup> day of December, 2019. The information in the would be blank space for "Previous Conviction" was partially recorded by N.J. Tungaraja, RM upon submission by Ms. Mgoma (SA) on the 4<sup>th</sup> day of December, 2019 when the case was called up for Judgment but stopped midway when it came apparent that the offenders had already been sentenced by the retired Magistrate since the 3<sup>rd</sup> day of December, 2019.

Section 214 (3) of the Criminal Procedure Act, [Cap 20] provides that nothing shall be construed as preventing a Magistrate who has recorded the whole of the evidence in any trial and who, before passing the judgment is unable to complete the trial, from writing the judgment and forwarding the record of the proceedings together with the judgment to be

read over and, in the case of conviction, for the sentence to be passed by that other Magistrate.

The passing of sentence is proceed by sentencing hearing for sentencing recommendation and mitigation by the prosecution and the offenders respectively pursuant to sections 236 and 237 of the Criminal Procedure Act, [Cap 20]. The original record of the trial Court does not reveal that the statutory requirements under sections 214 (3), 236 and 237 of the CPA, [Cap 20] were complied with by the trial Court in sentencing the offenders.

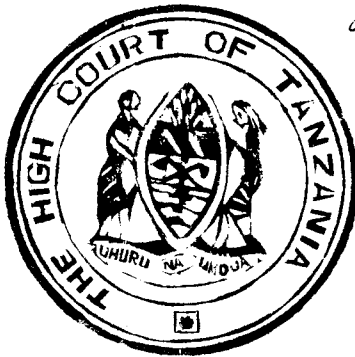
When the said procedural irregularities were made known to the Court by the Republic by way of letter Ref. No. NPS/C.110 CM117/151 dated the 5<sup>th</sup> day of December, 2019, the Court has to invoke its revisionary powers pursuant to sections 372 and 373 (2) of the Criminal Procedure Act, [Cap 20] to consider the said irregularities,.

Both the Republic and the offenders were heard in the Court on the 7<sup>th</sup> day of February, 2020. Both parties admitted that there had been no sentencing hearing for purposes of sentencing recommendation and mitigation prior to the impugned sentence. The Republic advised the Court to nullify the whole portion of judgment relating to sentence and the entire proceedings and orders of the trial Court dated the 4<sup>th</sup> and 6<sup>th</sup> days of December, 2019. That, the original record be remitted back to the trial Court for sentencing hearing for purposes of sentencing recommendation and mitigation and passing of the sentence in line with sections 236, 237 and 214 (3) of the Criminal Procedure Act, [Cap 20].

On their part, the two offenders submitted that there was no need for undertaking such procedures for the Republic has all along been party and aware of what was taking place in the trial Court, so the Republic could have intervened in time prior to the delivery of the impugned judgment. The offenders advised the Court that the trial Court's judgment should not be disturbed.

That said, the Court is of the considered position that upon the verdict of conviction had been entered against the offenders by the retiring trial Magistrate there should have been sentencing hearing for purposes of sentencing recommendation and mitigation by the prosecution and the offenders respectively pursuant to sections 236 and 237 of the Criminal Procedure Act, [Cap 20] prior to passing the sentence thereof by either himself or by another Magistrate who succeeded the retired Magistrate in line with section 214 (3) of the Criminal Procedure Act, [Cap 20]. That being the case, by virtue of the revisionary powers of the Court under section 372 of the Criminal Procedure Act, [Cap 20] all that portion of the judgment starting with the phrasal **"PREVIOUS CONVICTION"** through the purported sentence thereof titled **"SENTENCE"**, signed and dated the 3<sup>rd</sup> day of December, 2019 along with the record of proceedings and orders dated the 4<sup>th</sup> and 6<sup>th</sup> days of December, 2019 save for the particulars of the offenders and their sureties thereof are hereby declared a nullity, quashed and set aside accordingly. The original record is hereby remitted to the trial Court for its action before another Magistrate in terms of sections 236, 237 and of 214 (3) of the Criminal Procedure Act, [Cap 20]. That other Magistrate who succeeds the retired Magistrate shall record the

reasons for taking over the matter as he discharges his judicial duties in relation to the case accordingly.



  
GEORGE M. MASAJU

**JUDGE**

20/2/2020