IN THE HIGH COURT FOR ZANZIBAR
AT VUGA
CRIMINAL APPEAL NO. 25 OF 2023

(Appeal from the judgement of the Regional Court at Mahonda in Criminal Case no. 87 of 2020)

HAJI KHALFAN ABDALLA ..... APPELLANT

VS

THE DPP ..... RESPONDENT

JUDGEMENT OF THE COURT

20/09/2023 & 01/11/2023

KAZI, J.:

The appellant, Haji Khalfan Abdalla, was convicted after being charged before the Regional Court at Mahonda (the trial court) with two counts, namely attempted rape contrary to section 111 (1) (2) (a) of the **Penal Act** No. 6 of 2018 (the Penal Act), and indecent assault contrary to section 114 (1) of the **Penal Act**. He was sentenced to serve seven years imprisonment for each count. The sentences were to run concurrently. In addition, he was ordered to pay Tsh. 100,000/- to the victim as compensation; on default, he shall serve seven months imprisonment.

Challenging the trial court decision, he filed a petition of appeal containing a single ground and three alternative grounds. I will not reproduce the grounds of appeal herein for the reasons to be known shortly.

Before I proceed, I find it necessary to recount brief evidence that led to the appellant's conviction. On 30th July 2020, at about 4:00 pm, PW1, the victim (name withheld), was at Kizole harvesting rice on her farm, where she was confronted by the appellant, who asked her for a hoe. As she didn't have it, she asked the appellant to go and look for it to another person at the plot next to the victim's farm. The appellant then roved around and returned to the victim with a sword. He strangled her and attempted to rape her. The victim managed to block the appellant from doing the awful act. Nevertheless, the appellant forced her to stimulate his manhood while touching the victim's nipples. Later, he ejaculated and ran away. The victim reported her ordeal to Sheha and later to Police at Mahonda.

The victim identified the appellant on 27th September 2020 in the identification parade conducted at Mahonda police station by Assistant Inspector Salum Moh'd (PW2).

After the testimony of two prosecution witnesses, the prosecution case was closed, whereby the trial court found the appellant had a case to answer. The appellant was a lone defence witness. In his defence, he denied committing the offence and contended that he was at work in the garage on the material date. He claimed further that he stayed in Kitope and had no habit of visiting Kazole. Therefore, he did not know why the victim pointed him as a perpetrator.

After closing the defence case, the trial court magistrate pronounced his judgement where he believed the victim's story and convicted the appellant with the counts of attempted rape and indecent assault.

At the appeal hearing, the appellant was represented by Mr. Ramadhan Bakar Chemauset and Mr. Emanuel John, learned advocates. The respondent was represented by Mr. Suleiman Yusuf Ali, learned State Attorney.

In his alternative ground of appeal, the appellant, inter alia, grilled the propriety of the trial court judgement subject to this appeal. This issue alone is sufficient to dispose of the entire appeal.

On the propriety of the trial court's judgement, Mr. Chemausat contended that the trial court's judgement does not meet the threshold of good judgment. He argued that section 290 (1) of the **Criminal Procedure Act** No. 7 of 2018 (the CPA) talks about the contents of the judgement. He went on to submit that the judgement has the following elements: one, it must have points or points of determination; two, the decision; and three, the reasons for the decision. He maintained that the trial court's judgement doesn't contain those elements. He argued further that section 290 (2) of the CPA requires the judgement to specify the offence and section of the law with which the person is convicted with. He maintained that the trial court did not specify the offence and law with which the appellant was convicted with, the omission which led its decision to be a nullity.

On his side, Mr. Ali did not respond regarding the propriety of the trial court's judgement, but he admitted that the trial court did not specify the law which the appellant was convicted with. It was his view that the

conviction against the appellant was improper. On the way forward, Mr. Ali urged the Court to rectify the omission by invoking section 381 of the CPA or to remit the record to the trial court for it to enter a proper conviction.

In principle, I agree with the submission of Mr. Chemausat that the judgement of the court is supposed to have an analysis and evaluation of the evidence adduced from both sides of the case, and it must conform with section 290 (1) (2) (3) of the CPA which provides as follows:

> "290.-(1) *Every such judgment shall, except as otherwise expressly provided by this Act, be written by the presiding officer of the court 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 in open court at the time of pronouncing it.*
>
> (2) *In the case of a conviction, the judgment shall specify theoffence of which and the section of the Penal Act or other law under which the accused person is convicted, and the punishment to which he is sentenced.*
>
> (3) *In the case of an acquittal, the judgment shall state the offence of which the accused person is acquitted and shall direct that he be set at liberty".*

Therefore, when composing a judgement, it is essential for the judicial officer to analyse and evaluate the evidence adduced by the prosecution and defence witnesses and to give reasons for his decision. In the case of **Amiri Mohamed v R**, [1994] T.L.R 138, the Court of Appeal had this to say regarding this issue: -

> "*Every magistrate or judge has got his or her own style of composing judgment Some judgments are more logically written, some are more neatly thoughtful, some are more compendious, and so on. What vitally matters is that the essence should be there, and this includes critical analysis of both the Prosecution and Defence.*"

I have read the trial court judgement and am confident that it does not conform with the principles articulated above. In his judgement, the learned trial magistrate summarised the evidence adduced from both sides only without addressing the elements of the offence which the prosecution side was required to prove, and worse, he failed to analyse and evaluate the evidence presented before him. Additionally, as observed by the learned legal practitioners from both sides, the trial magistrate did not specify the offence and the provision of the **Penal Act**, of which the appellant was convicted with. Admittedly, this is contrary to section 290 (2) of the CPA. Thus, no proper conviction was entered against the appellant. Generally, the learned trial court magistrate did not comply with sections 290 (1) & (2) of the CPA when composing the impugned judgement. Therefore, legally, the trial Court

judgement is invalid; consequently, the instant appeal is improperly before this Court.

As the way forward, I am inclined to invoke sections 359 and 361 (1) (a) of the CPA by nullifying the trial court's judgement in Criminal Case No. 87 of 2020 Delivered on 05th July 2022.

The trial court's record to be returned to the trial court before the Regional Magistrate In-charge for the reassignment before another Regional Magistrate who should compose a fresh judgement in accordance with the law within thirty (30) days from the date of this judgment.

In the meantime, the appellant should remain in Custody. Order accordingly.

Dated at Tunguu, Zanzibar this 01st November 2023.

G. J. KAZI
JUDGE
01/11/2023