

**IN THE HIGH COURT OF ZANZIBAR  
AT TUNGUU**

**CRIMINAL APPEAL NO. 05 OF 2024  
(Arising from Criminal case No. 29 of 2021 at Regional Court  
of Mahonda)**

**BAKARI SAID JUMA ..... APPELLANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

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**R U L I N G O F T H E C O U R T**

**28<sup>th</sup> Feb, & 11<sup>th</sup> March, 2024**

**H S.K. Tetere J.:**

This ruling arises out of the legal concerns raised by the Respondent, the Republic. Bakari Said Juma, the Appellant herein, arraigned at Regional Court sitting at Mahonda for the offence of possession of Narcotic Drugs Contrary to Section 15(1) (a) of Drugs and Prevention of illicit Traffics drugs Act No. 9 of 2009 as amended under section 11(a) of the act No. 12 of 2021. The Appellant denied the charge and upon full trial, he was convicted and sentenced to serve seven years in prison. Being aggrieved



by the conviction and sentence of the trial court, he preferred an appeal to this court.

When the appeal was called for hearing, the appellant appeared in person unrepresented and on the other hand the Respondent, Republic was enjoyed the service of Mr. Suleiman Maulid, Principal State Attorney.

Before the appeal has commenced for hearing, Mr. Suleiman Maulid, PSA for the Respondent, raised two points of legal concerns challenging the competency of appeal. **Firstly**, he submitted that the record of the proceeding revealed that there is no mitigation and sentence in the trial court Judgement. He said one of the grounds of appeal raised by the appellant is on incomplete record of the proceeding. He was on the view that if the record of the proceedings were complete the said ground of appeal could not exist. He therefore prayed to be given a complete record of the trial court's proceedings. **Secondly**, he contended that there is a fatal error in the record of the trial court Judgement where it included the name of Detective Tatu whose name was not appeared in the trial court's proceedings. He therefore asked the court to find that the appeal is



incompetent and it should be struck out and directs the trial court to complete the missing page in the proceeding.

In response, the Appellant strongly denied the stance suggested by the Respondent's PSA, Mr. Suleiman. He stated that the proceedings were corrected and that was the reason they were issued and signed by the Honorable Magistrate. He contended that if there is any defect or error in the proceeding, it should benefit the appellant taking consideration that he is carried on with the sentence. He therefore prayed the court to proceed with hearing the appeal.

After having heard the argument by the parties, the crucial issue for consideration and determination by the court at this stage, is the competence of the present appeal. It is well established practice that any person finds him/her self-aggrieved by the decision of the court and preferred an appeal, has to apply to a particular court in question to be supplied with the all-necessary documents for appeal purpose. The copy of the Judgement desired to be appealed is a primary document to be accompanied with the petition of appeal. For a judgement to be valid it must





comply with the requirement of Section 290 -(1) & (2) of Criminal Procedure Act No. 7 of 2018. It provides as follow: -

-(1) "....."

-(2) *In the case of conviction, the judgement shall specify the offence of which and the section of penal act or other law under which the accused person is convicted, **and the punishment to which he is sentenced.***"

A close reading of the above cited provisions, it is requirement of the law that where the accused is convicted, the judgement must specify the sentence. Admittedly, in the instant case, the copy of the judgement accompanies with the petition of appeal, it has missing page of mitigation and sentence.

However, when I passed through the original file of the rial court, the situation is deferent. The missing page of mitigation and sentenced raised by PSA Suleiman are included. They are part and parcel of the trial court proceeding. What transpired at the trial court is that the judgement page of mitigation and sentence was not typed and printed. Therefore, it is the



view of this court that the said error does not vitiate the competency of the present appeal.

It is also in the record that the appellant was aware with that defect after he was supplied with the copy of the proceeding. But he remains silent thinking that it will benefit him in appeal. I'm saying so because as submitted by PSA Suleiman that one of the grounds of appeal raised by the appellant was the incompleteness of the record of proceeding. In the case of **MRISHO SULEIMAN NGOZONA Vs DIRECTOR OF PUBLIC PROSECUTION, Civil Appeal No. 32 of 2023, (Unreported)** at page 5, where my sister Judge (**A. I. S. Sued J.**) held:

***"Mtu yeyote alieomba mwenendo wa shauri husika na ikatokea kuwa kuna upungufu wa kitu chochote katika mwenedo aliopatiwa basi ana wajibu wa kuomba kitu kilichopungua mahakamani".*** ("Any person who requested for the relevant proceedings and it turns out that there is a lack of anything in the proceedings he was given, then he has the responsibility to request the same in court")

In the case at hand, the above stance was not taken by the appellant. Therefore, it is the view of this court that if the appellant took deliberate

efforts to inform the magistrate in charge on the missing page of the proceeding, this case could not be in position it is now.

Moreover, on the second concern that the judgement raised new fact which was not part in proceeding, it is my view that this court is not in proper position to dwell much with that ground at this stage as the matter goes to the root of the merit of the appeal. In that regard, this point is misconceived at this stage.

For the foregoing reasons, I have considered the contending arguments of the parties. Given the nature of the circumstances of the case, I'm of the view that the interests of justice will be served if the missing page of mitigation and sentence is furnished to both parties. With respect, therefore, this court is not in agreement with the PSA Suleiman to strikeout the appeal.

In the result, the Applicant is given thirty days to apply for the missing pages in the trial court proceeding. Ultimately, I return the record in



respect of Criminal Case No. 29 of 2021 to the trial court and direct that the trial court to type and print the missing pages as required.

Meanwhile, the status quo of the appellant shall continue to remain it is now while waiting to given complete record of the proceedings.

It is accordingly ordered.

**DATED** at **ZANZIBAR** this 11<sup>th</sup> day of March, 2024.

A handwritten signature in blue ink, appearing to read 'S. K. TETERE', is written over a horizontal dotted line.

**HAJI. S. K. TETERE**  
**JUDGE**