

**IN THE HIGH COURT OF TANZANIA
AT ARUSHA**

CRIMINAL APPEAL NO. 23 OF 2012

(Originating from Monduli District Court Criminal Case No.8/2009)

ALFONCE SOGORE **1ST APPELLANT**
JOHN LEMAYANI **2ND RESPONDENT**

- *VERSUS* -

THE REPUBLIC **RESPONDENT**

JUDGMENT

SAMBO, J.

The appellants, Alphonse Sogore and John Lemayni, herein referred to as the 1st and 2nd respectively, being aggrieved by the decision of the District Court of Monduli in Economic Crime Case No. 8 of 2009, opted to lodge the present appeal. They have earmarked a total of five grounds based on that, **one**, the trial court did not state under which section of the law they were convicted, **two**, the inventory was wrongly admitted, **three**, the prosecution testimony is contradictory and **four**, all the exhibits tendered by pw3 Sgt. Abniel Mwampondele were also wrongly admitted as he made no description of the same. Lastly, that the case was not proved beyond reasonable doubt.

By order of this honourable court, the appeal was argued by way of written submissions and each side managed to file the same accordingly. Thereupon, I did peruse the proceedings and read the judgment of the trial court. I was shocked to note that the learned resident magistrate failed and or didn't convict the appellants after seeing them guilty of the offence they are charged with. The reasoned judgment in concluded as hereunder:-

"From the above analysis I am on the considered view that prosecution side proved beyond reasonable doubt that the accused committed the offence jointly as they

were charged. I hereby find them guilty to the offence charged".

The remains to state here that the judgment of the trial court was and todate is not signed. In the case of Ramadhani Masha V. Republic [1985] T.L.R. 172, this court held that:-

In a criminal trial, where it is decided that the accused person is guilty, the basic elements of the decision of the Court are conviction and sentence, with the former being a pre requisite of the latter, as there was no conviction when the appellant was sentenced, there was no decision of the court and, the error being incurable under s.346 of the Criminal Procedure Code [now S.388 of the Criminal Procedure Act, 1985], the sentence passed in this case was unlawful.

Based on the above outstanding decision of this honourable court, I do not hesitate and have no reason to do so, to declare and hold that the sentence imposed against the appellants in this Case, without first being convicted, is unlawful in all fours.

The appellants were unlawfully sentenced on the 15th day of April, 2011, which means they have been serving as prisoners from about twenty one (21) months now. This is enough, it won't be fair and just to order a re-trial. Justice must prevail.

In view of what I have stated herein above, I allow this appeal, quash the decision of the trial court and set aside the sentence imposed against both appellants. I now order that the two appellants be released from the prison cells forthwith, unless otherwise lawfully detained in respect of any other criminal offence.

[SGD]

K.M.M. SAMBO

JUDGE

22/1/2013

Delivered in chambers this 24th day of January, 2013, in the presence of the appellants and Mr. Muhalila, learned state attorney for the respondent/Republic.

[SGD]

K.M.M. SAMBO

JUDGE

24/1/2013

I hereby certify this to be a true copy of the original.


District Registrar

Arusha

.....12/04/13