

Citation	Parties	Legal Principles Discussed
CRIMINAL APPEAL NO. 67 OF 2005- COURT OF APPEAL OF TANZANIA AT TANGA- MAKAME,J.A.,MUNUO,J.A., And KAJI,J.A.	HAMDANI MOHAMED Vs. THE REPUBLIC (Appeal from the conviction and sentence of the High Court of Tanzania at Tanga- Criminal Appeal No. 104 of 2002 -Mkwawa J.)	CORRECTION OF ERROR- rule 40 (1) of the Court of Appeal Rules, 1979- In substituting the sentence it was inadvertently recorded that the Court was guided by the provisions of Section 287 B of the Penal Code- Part of the judgment from page seven (7) sixth line to page eight (8) second line which is corrected under rule 40 (1) of the Court of Appeal Rules, 1979.

**IN THE COURT OF APPEAL OF TANZANIA
AT TANGA**

(CORAM: MAKAME,J.A.,MUNUO,J.A., And KAJI,J.A.)

CRIMINAL APPEAL NO. 67 OF 2005

HAMDANI MOHAMED.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

**(Appeal from the conviction and sentence of the High Court
of Tanzania at Tanga)**

(Mkwawa J.)

Dated the 22nd day of October, 2003

in

Criminal Appeal No. 104 of 2002

.....

CORRECTION OF ERROR

6 July, & 12 September, 2007

KAJI, J.A.

In the District Court of Muheza, in Criminal Case no 368 of 2001, the appellant, Hamdani Mohamed, together with another accused person, were convicted of two offences, namely:-

1st Count: Attempted armed robbery, contrary to section 287 of the Penal Code, Cap 16.

2nd Count: Being in unlawful possession of firearm contrary to sections 4 and 34 (1) of the Arms and Ammunitions Act No 2 of 1991.

They were each sentenced to seven (7) and fifteen (15) years imprisonment on each count respectively. Sentences were ordered to run consecutively. On appeal to the High Court the appellant's appeal was dismissed for want of merit. Still dissatisfied the appellant preferred this appeal in the Court.

In the course of hearing the appeal, the conviction on the 2nd count was quashed and the sentence thereat was set aside, on the ground that the appellant was charged and convicted under a law which had not yet come into force at the material time.

The Appeal against conviction on the 1st count was dismissed, and the sentence of seven (7) years imprisonment was set aside and substituted with a sentence of fifteen (15) years imprisonment.

In substituting the sentence it was inadvertently recorded that the Court was guided by the provisions of Section 287 B of the Penal Code. The said section was quoted in extenso. It is this part of the judgment from page seven (7) sixth line to page eight (8) second line which is hereby corrected under rule 40 (1) of the Court of Appeal Rules, 1979 to read as follows:-

“Here we are guided by the provisions of section 287 (2) of the Penal Code, as amended by Act No. 10 of 1989 which provides as follows:-

Attempted robbery section 287

- (1) Any person who assaults any person with intent to steal anything, and, at or immediately after the time of assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, is guilty of an offence, and is liable to imprisonment for a term

not less than seven years and not exceeding twenty years, with corporal punishment.

- (2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if at or immediately before or immediately after the time of the assault, he uses any personal violence to any person, he is liable to imprisonment for a term of not less than fifteen years and a maximum of life imprisonment, with corporal punishment.

That being the law, we set aside the sentence of seven (7) years and substitute with a sentence of fifteen (15) years imprisonment with twelve (12) strokes”

DATED at DAR ES SALAAM this 24th day of July, 2007.

L.M. MAKAME
JUSTICE OF APPEAL

E.N. MUNUO
JUSTICE OF APPEAL

S.N. KAJI
JUSTICE OF APPEAL

I certify that this is a true copy of the original

S. M. RUMANYIKA
DEPUTY REGISTRAR