

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: RAMADHANI, J.A., LUBUVA, J.A. And LUGAKINGIRA, J.A.)

CRIMINAL APPEAL NO. 86 OF 1999

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS ..... APPELLANT

AND

1. PETER KALIFUMU }  
2. BUNGA KALIFUMU } ..... RESPONDENTS

(Appeal from the Decision of the High  
Court of Tanzania at Mbeya)

(Wambura-PRM/Extended Jurisdiction)

dated the 27th day of July, 1999

in

Criminal Appeal No. 99 of 1998  
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R U L I N G

RAMADHANI, J.A.

The Director of Public Prosecutions filed an appeal against the decision of the Principal Resident Magistrate (Extended Jurisdiction) in an appeal from the judgment of the District Magistrate of Mpanda District.

The DPP later withdrew the appeal when the matter had already been caused listed. So, when the matter came up for hearing Mr. Mbago, learned Principal State Attorney, told the Court that the DPP was withdrawing its appeal. Mr. Mkumbe, learned advocate for the respondent, raised no objection.

However, the attention of this Court was caught by an irregularity which appears to be common among Resident Magistrates with Extended Jurisdiction. So, we decided to invoke our power of revision to rectify the error.

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Subsection (3) of Section 4 of the Appellate Jurisdiction Act, 1979, as amended by Act No. 17 of 1993, provides as follows:

"Without prejudice to subsection (2), the Court shall have the power, authority and jurisdiction to call for and examine the record of proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision made thereon and as to the regularity of any proceedings of the High Court."

So, we agreed to the withdrawal of the appeal by the DPP and by using section 4 (3) of the Act we assumed revisional jurisdiction.

The file of the appeal from the District Magistrate, is titled: "In the High Court of Tanzania at Mbeya" but it was handled by S.A.N. WAMBURA, PRM (Extended Jurisdiction). Now, that was wrong. The appeal was properly filed in the High Court but as a PRM (Extended Jurisdiction) was going to deal with it, then it should have been transferred to the Resident Magistrate's Court.

Subsection (2) of section 45 of the Magistrates' Courts Act, 1984, (Act No. 2 of 1984), as amended by Act No. 2 of 1996, provides:

"The High Court may direct that an appeal instituted in the High Court be transferred to and be heard by a Resident Magistrate upon whom extended jurisdiction has been conferred by section 45 (1)."

Now, for the avoidance of doubt the phrase "may direct" in the subsection refers to the discretion of the High Court itself to deal with an appeal or to let it be dealt with by a Resident Magistrate with extended jurisdiction. Once the High Court has exercised its discretion and has decided that the appeal is to be dealt with by such a Resident Magistrate, then the appeal MUST be transferred to the Resident Magistrate Court and be titled as such.

In this case WAMBURA, PRM (Extended Jurisdiction) had the jurisdiction to deal with the appeal but in the Resident Magistrate's Court and not in the High Court. Since she dealt with it in a wrong forum, the proceedings were nullity.

We, therefore, nullify and quash the entire proceedings and the decision purportedly by the High Court.

DATED at NBEYA this 30th day of March, 2001.

A. S. L. Raradhani  
JUSTICE OF APPEAL

D. Z. Lubuva  
JUSTICE OF APPEAL

K. S. K. Lugakingira  
JUSTICE OF APPEAL



I certify that this is a true copy of the original.

( A. G. Mwarija )  
DEPUTY REGISTRAR