

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: LUBUVA, J.A., MROSO, J.A. And MSOFFE, J.A.)

CRIMINAL APPEAL NO. 48 OF 2002

1. IDDI SHABANI
2. MANENO DOTTO APPELLANTS
3. MOHAMED ISSA

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Dar es Salaam)

(Muro, J.)

dated the 23rd day of July, 2001
in
HC. Criminal Appeal No. 36 of 2001

JUDGMENT OF THE COURT

4 & 19 July 2006

MSOFFE, J.A.:

The appellants were charged in the court of the Resident Magistrate at Kisutu, Dar-es-Salaam with two counts of armed robbery contrary to sections 285 and 286 of the Penal Code; and one count of threatening violence contrary to section 89 (2) (a) of the Penal Code. After a full trial by a Senior District Magistrate the court found that the evidence on record did not establish the offence of armed robbery in the first two counts. Rather, the offence established was robbery with violence. The appellants were accordingly convicted of robbery with violence and threatening violence. Consequently, they were each sentenced to imprisonment terms for fifteen years in the first two counts and six months in the third count with an order for the

sentences to run concurrently. Dissatisfied, they made a first appeal to the High Court of Tanzania at Dar-es-Salaam. The appeal was dismissed, hence this second appeal.

In their respective memoranda of appeal the appellants are essentially saying that the case against them was not proved beyond reasonable doubt. Specifically, they are contending that they were not identified on the date they were alleged to have committed the above offences. For the reason which will be apparent hereunder we will not determine the appeal on merit.

At the hearing of the appeal Mr. Masaju, learned Senior State Attorney for the respondent Republic, drew our attention to the fact that the case was filed in a resident magistrate's court and was tried by a senior district magistrate. He submitted that the magistrate had no jurisdiction and that the proceedings before such magistrate were a nullity. He accordingly invited us to declare the proceedings a nullity.

The Magistrates' Courts Act, 1984 (hereinafter to be referred to as the Act) confers jurisdiction to different categories of magistrates. A magistrate's court is properly constituted only when presided over by a magistrate with jurisdiction. Under S. 6 (1) (c) of the Act a Court of a resident magistrate is duly constituted only when presided over by a resident magistrate. S. 6 (1) of the Act reads as follows:-

6 - (1) Subject to the provisions of section 7, a

magistrate's court shall be duly constituted when held by a single magistrate, being -

- a) in the case of a primary court, a primary court magistrate;
- b) in the case of a district court, a district or a resident magistrate;
- c) in the case of a court of a resident magistrate, a resident magistrate.

Section 7 which is mentioned above is not relevant for purposes of this appeal because it relates to the requirement of assessors to sit in the primary court.

In the case of **Kweyambah Richard Quaker v Republic**, Criminal Appeal No. 19/2002 (unreported), which is a recent decision of this Court, we observed as follows:-

“----- while a resident magistrate (who is also a district magistrate by virtue of the definition of a “district magistrate” in section 2 of the Act) can sit in the district court, a district magistrate cannot also sit in a resident magistrate's court”.

The crucial question is whether the proceedings before the senior

district magistrate were a nullity as a result of the magistrate sitting in the court of resident magistrate.

Without hesitation, we are in agreement with Mr. Masaju that the proceedings were a nullity. S. 6 (1) (c) is very clear that a court of a resident magistrate is duly constituted when presided over by a resident magistrate. Paragraph (c) of the sub-section does not provide for a district magistrate to sit and hear a case filed in the court of resident magistrate. In a number of decisions it was held that proceedings before a district magistrate sitting in the court of resident magistrate contrary to section 6 (1) (c) of the Act were a nullity. See for instance, **Kweyambah** (supra), **William Rajabu Mallya and 2 Others v Republic** (1991) TLR 83, and **Dar-es-Salaam Airport Co. Ltd. v Ally Ikoki** - Civil Application No. 66 of 2004 (unreported). In **Dar-es-Salaam Airport Co. Ltd.** this court referred to a decision of the court in **John Agricola v Juma Rashid** (1990) TLR where it was held:-

Lack of jurisdiction in the presiding magistrate is a fundamental defect that is not curable at all. A trial by a District Magistrate who lacked jurisdiction in a court he was presiding was a complete nullity.

And in **Kweyambah** we stated as follows:-

It is abundantly clear therefore, going by the many decisions of this Court, that where a magistrate hears a case in a court in which they have no jurisdiction, the whole of the proceedings are a nullity, even if the magistrate is competent to hear the case had it been filed in a court in which they had jurisdiction to sit.

In the result, going by the above provisions of the Act and the authorities cited, we hereby exercise the court's revisional power under section 4 (2) of the Appellate Jurisdiction Act, 1979 (as amended by the Appellate Jurisdiction (Amendment) Act No. 17/1993), and quash and set aside the proceedings before the Senior District Magistrate which were a nullity. In effect therefore, since the case has not been tried it may proceed to hearing before a Resident Magistrate who is competent to sit in the court where it was filed. In case they will still be convicted the period they have spent in prison should be taken into account.

DATED at DAR ES SALAAM this 14th day of July, 2006.

D.Z.L LUBUVA
JUSTICE OF APPEAL

J.A. MROSO
JUSTICE OF APPEAL

J.H. MSOFFE
JUSTICE OF APPEAL

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

(S.M. RUMANYIKA)
DEPUTY REGISTRAR

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HC. Criminal Appeal No. 36 of 2001

Between

The Republic **Prosecutor**

Versus

Iddi Shabani & 2 Others **Accused**

In Court this 19th day of July, 2006

**Before: The Honourable Mr. Justice D.Z. Lubuva, Justice of
Appeal**

**And The Honourable Mr. Justice J.A. Mroso, Justice of Appeal
The Honourable Mr. Justice J.H. Msoffe, Justice of Appeal**

THIS APPEAL coming for hearing on 4th day of July, 2006 in the presence of the appellants AND UPON HEARING the appellants in person and Mr. Masaju, Senior State Attorney for the Respondent/Republic when it was ordered that the appeal do stand for judgment;

AND UPON the same coming for judgment this day:-

IT IS ORDERED THAT the proceedings before the Senior District Magistrate are a nullity and are quashed and set aside. IT IS FURTHER ORDERED THAT the case which has not been tried it may proceed to hearing before a Resident Magistrate who is competent to sit in the Court where it was filed.

Given under my hand and the Seal of the Court this 19th day of July, 2006.

(S.M. RUMANYIKA)

DEPUTY REGISTRAR

Extracted on 19th July, 2006.