

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: KILEO, J.A., BWANA, J.A. And ORIYO, J.A.)

CRIMINAL APPEAL NO. 114 OF 2006

ASHA KABOHORA

BENARD MANARA

.....APPELLANTS

VERSUS

THE REPUBLIC.....RESPONDENT

**(Appeal from the decision of the Resident Magistrate Court
at Dodoma)**

(Somi, PRM-Ext. Juris)

in

CRIMINAL APPEAL NO. 42 OF 2004

.....

RULING OF THE COURT

25th & 29th March, 2011

BWANA, J.A.:

A brief background to this matter is necessary in order to put the issues involved in their proper perspective.

The Appellants are husband and wife Benard Manara, the second Appellant herein, was charged with and convicted of the

offence of rape, contrary to sections 130 (1)(2)(e) and 131(1) of the Penal Code, Cap 16, as amended by the Sexual Offence Special Provisions Act No. 4 of 1998(SOSPA). He was sentenced to a prison term of thirty (30) years. In addition, there was an order for corporal punishment of twelve (12) strokes of the cane.

Asha Kabohora, the first Appellant herein, was charged with and convicted of the offence of being a party to an offence contrary to section 22(b) of the said Penal Code. She was sentenced to serve thirty (30) years imprisonment as well. It was the prosecution case that the first appellant is the one who called the victim of the rape, Grace Masanzu, aged eleven years, into their room. Upon entering the room, Asha held her down while Bernard took off her underwear and raped her. Subsequently both Appellants were arrested, charged, convicted and sentenced as stated above, in the Dodoma District Court at Dodoma. That was on 27 December, 2002.

Almost two years lapsed without the Appellants taking steps for purposes of appealing. On 8 October, 2004 however, they eventually

filed Chamber Summons (made under section 361(a)(b) of the Criminal Procedure Act, (the CPA) (Cap 20, R.E. 2002), applying for leave to file a Notice of Intention to appeal out of time. That set in motion the proceedings culminating in this decision of the Court.

On the same date, that is 8 October, 2004, Kaijage, J transferred the application to be heard by a Magistrate with Extended Jurisdiction, pursuant to the provisions of section 45(2) of the Magistrates' Courts Act Cap II (R.E. 2002) (the MCA). We must observe at this stage that the said section of the MCA allows transfer of appeals. It does not cover applications. The relevant subsection provides thus:-

"S.45(2)

*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).....(emphasis provided).*

Therefore the transfer of the hearing of that application to a resident magistrate with extended jurisdiction, in our considered view, contravened the clear provisions of section 45(2) of the MCA.

Mr. Somi, PRM, Ext.Juris, proceeded to hear the application and in his Ruling, dated 29 March, 2006, dismissed it. He stated ***inter alia*** the following:-

*"In a nutshell therefore, the applicants' idea of filing this application in October, 2004, that is one year after they had been served with relevant certified copies, is nothing but a mere after thought which cannot be entertained. **The application is therefore dismissed** for want of merits....." (emphasis provided).*

We repeat and observe that Mr. Somi, PRM, Ext.Juris, had no jurisdiction to hear and determine that application.

Aggrieved by that decision of Somi, PRM, Ext.Jurisd, the Appellants filed Notices of Appeal on 30 March 2006. When the appeal came before us, the following pertinent issues became apparent.

- It is on record that subsequent to the Ruling by Somi, PRM, Ext.Juris., the Appellants filed a Grounds of Appeal before this Court. We did note ***suo motu*** that the said Grounds of Appeal was improperly before the Court as there was no Notice of Appeal filed. To make things worse, annexed to the said Grounds of Appeal was a Notice of Motion wherein the "Applicants" asked this Court to make an order to "the applicants to file the **Notice of intention to Appeal and Memorandum of Appeal to the High Court of Tanzania at Dodoma** out of time upon the extension of time" (emphasis provided).

- It is our considered opinion that the contents of the foregoing “appeal” cum “application” before us, is misconceived and wrong in law and therefore, not properly before us.
- Since Somi-PRM-Ext.Juris, was not competent to hear the application and enter the Ruling now being challenged, it is our finding that all that transpired from the time the application was transferred to him, is null and void. Therefore, the decision of the trial Court dated 27 December, 2002 stands.

In conclusion the appeal before us is incompetent. All that transpired starting with the proceedings before Somi, PRM-Ext. Jurisd is hereby struck out. The decision of the trial court is still in force. Should the Appellants before us wish to appeal, then they should take appropriate steps towards that end.

We so find.

DATED at DODOMA, this 25th day of March, 2011

E.A. KILEO
JUSTICE OF APPEAL

S.J. BWANA
JUSTICE OF APPEAL

K.K. ORIYO
JUSTICE OF APPEAL.

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



M. A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL