

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: MSOFFE, J.A., KILEO, J.A., And KIMARO, J.A.)

CRIMINAL APPEAL NO. 129 OF 2012

RASHIDI MTEMI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the judgment of the Resident Magistrate's Court

at Dodoma)

(Awasi, PRM, Ext. Jurisdiction.)

dated 6th June 2004

in

PRM Criminal Appeal No.1 of 2004

.....

JUDGMENT OF THE COURT

20th & 23rd September, 2013

KIMARO, J.A.:-

The appellant was convicted by the District Court of Mpwapwa at Mpwapwa with the offence of rape contrary to section 130(1) and 131 of the Penal Code [CAP 20 R.E.2002]. Aggrieved with the conviction and sentence, the appellant appealed to the High Court. His appeal was heard by S.S. Awasi, Principal Resident Magistrate with extended jurisdiction as

he then was, but the appellant ended up in losing the appeal. His second appeal to this Court is indicative of his interest to protest his innocence. Before the Court the appellant has come with three grounds of appeal challenging the prosecution evidence for its insufficiency to base his conviction on.

When the appeal was called on for the hearing, the appellant appeared in person. The respondent Republic was represented by Mr. Othman Katuli, learned State Attorney. Before the appeal could be heard on merit, the learned State Attorney requested the Court to grant him leave so that he could raise a point of law under Rule 4(2) (a) and (b) of the Court of Appeal Rules, 2009. The Court acceded to the request and granted him leave to raise the preliminary point.

The preliminary observation the learned State Attorney had was that there is no evidence in the record of appeal that the magistrate who presided over the appeal had jurisdiction to hear it. Citing section 45(2) of the Magistrates Courts Act, [CAP 11 R.E.2002] the learned State Attorney said before any appeal can be heard by a Resident Magistrate, with

extended powers, the High Court has to specifically transfer that case to him/her. He said the record also shows that Mr. Awasi heard an application for extension of time to file a notice of appeal and the memorandum of appeal out of time. The learned State Attorney said that contravened section 45(2) of Cap.11 which limits the powers of such magistrates to appeals only.

Given the irregularity, the learned State Attorney requested the Court to use its powers of revision and quash the proceedings which were conducted illegally by the Principal Resident Magistrate with extended jurisdiction and remit the file back to the High Court so that it can proceed to hear the application and the appeal if time to appeal will be granted in accordance with the law.

The appellant admitted that he could not make any meaningful reply because the point raised by the learned State Attorney was legal and he had no ability to make a meaningful reply. He requested the Court to consider the long time he has spent in prison.

We have thoroughly gone through the record of appeal. We agree that the application for extension of time to file notice of appeal and the memorandum of appeal filed by the appellant under section 361 (a) and (b) of the Criminal Procedure Act, [CAP 20 R. E. 2002] and heard by Mr. Awasi, Principal Resident Magistrate with extended jurisdiction as reflected at the record of appeal from pages 29 to 34 contravened section 45(2) of CAP 11. The section says:

"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)."

The section is very clear that it is only appeals originating from District Courts which can be transferred to a resident magistrate with extended jurisdiction. See the case of **Zakaria Magomba V R** Criminal Appeal No.113 of 2006 (unreported). The chamber application for extension of time to file the notice of appeal and the appeal out of time was erroneously heard by Mr. S. S. Awasi Principal Resident Magistrate with extended jurisdiction. He had no jurisdiction. The proceedings for that application are a nullity.

Regarding the appeal, as there is no evidence to show that the High Court transferred the appeal to the Court of Resident Magistrate under Section 45 (2) of Cap 11 to be heard by Mr. S.S. Awasi, Principal Resident Magistrate with extended jurisdiction, the proceedings for the appeal were a nullity for want of jurisdiction.

Given this irregularity, we exercise powers of revision under section 4(3) of the Appellate Jurisdiction Act, [CAP 141 R.E.2002] and quash the entire proceedings which were conducted by Mr. Awasi, Principal Resident Magistrate with extended jurisdiction. We order the file to be remitted back to the High Court so that the application for extension of time to file notice of appeal may be heard. Depending on the outcome of the application the memorandum of appeal and the appeal could be dealt with in accordance with the law. Bearing in mind that the appellant has been in custody from 25th October, 2001 when he was convicted, we, for the interests of justice, direct the High Court to deal with the application as expeditiously as possible. It is ordered.

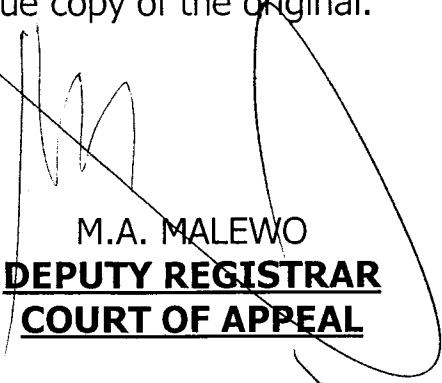
DATED at **DODOMA** this 20th of September, 2013.

J. H. MSOFFE
JUSTICE OF APPEAL

E. A. KILEO
JUSTICE OF APPEAL

N. P. KIMARO
JUSTICE OF APPEAL

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



M.A. MALEWO
DEPUTY REGISTRAR
COURT OF APPEAL