

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

CORAM: KILEO, J. A, ORIYO, J.A., And MMILLA, J.A.

CRIMINAL APPEAL NO. 159 OF 2014

1. STEPHANO SHAURI BAH 2. MWINYI NANGALO GADIE 3. JOHN WILLIAM FRANCIS 4. JOHN BEI TLUWAY 5. PHILIPO BASSO SLAA 6. KADOGOO NADE GIDAW 7. SHAMTE WILLIAM FRANCIS	}	APPELLANTS
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VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the Court of Resident Magistrate at Arusha)

(Mwingwa, PRM Ext. J.)

dated the 30th March, 2012

in

Criminal Sessions Case No. 8 of 2012

JUDGMENT OF THE COURT

15th & 23rd September, 2014

MMILLA, J.A.:

Stephano Shauri Baha, Mwinyi Nangalo Gadie, John William Francis, John Bei Tluway, Philipo Basso Slaa, Kadogoo Nade Gidawe and Shamte William Francis (the appellants), were on 30.3.2012 each sentenced to death following their conviction by the Court of Resident Magistrate presided over by a Principal Resident Magistrate with extended jurisdiction. It was alleged that on 19.9.2009

at about 19.00 hours at Quangded village within Karatu District in the Region of Arusha, the appellants, jointly and together murdered one Issa Mohamed Gumba. That decision aggrieved them, hence the present appeal which is against conviction and sentence.

Before us, the appellants who were also present in person were represented by Mr. Kelvin Kwagilwa, learned advocate, while the respondent Republic was represented by Ms Stella Majaliwa, learned State Attorney.

At the commencement of the hearing of the appeal, the Court raised an issue ***suo motto*** regarding whether or not the Principal Resident Magistrate with extended jurisdiction was actually clothed with jurisdiction to entertain Resident Magistrates' Court Criminal Sessions Case No. 8 of 2012 (c/f High Court Criminal Sessions Case No. 76B of 2011). Counsel for the parties were asked to comment on the point. However, before exploring their responses, we think, albeit briefly, it is pertinent to preface it with the background facts of the matter at stake.

After information was filed in the High Court at Arusha for which Criminal Sessions Case No. 76B of 2011 was opened, that case was on 3.10.2011 placed before Sambo, J for plea taking. Subsequent to that, the preliminary hearing was conducted after which the case was adjourned to await a date for trial. On

16.2.2012 however, the Judge in - charge made a direction under section 256A (1) of the Criminal Procedure Act Cap 20 of the Revised Edition, 2002 (the CPA) transferring the case to the lower court. It read as follows:-

"I hereby direct that Criminal Sessions Case No. 76B of 2011 in which the accused person(s) was/were committed to the High Court of Tanzania at Arusha be and is hereby transferred to the Court of Resident Magistrate, Arusha ... for hearing and/or trial and determination by a Resident Magistrate who, under Government Notice No. 33 of 10th March, 2006 is conferred with extended original jurisdiction under the provisions of sub – section (1) of section 173 of the Criminal Procedure Act, 1985 (Cap. 20 R. E. 2002)."

On 28.2.2012, the case was placed before B. B. Mwingwa, PRM (EXT) (as he then was) for trial at a session which was held at Monduli. It was finalized on 30.3.2012, the day on which the judgment which is the subject of this appeal was delivered.

As aforesaid, upon realizing that there was a jurisdictional issue, counsel for the parties were asked to give their views on the point.

First to submit on the point was Mr. Kwagilwa. He contended that in his view, there was no compliance with the provisions of section 256A (1) of the CPA. Besides, he submitted, it was improper for the Judge in – charge to have transferred the case to the Court of Resident Magistrate instead of transferring the same to a specific magistrate with extended jurisdiction, also that it ought to have been transferred before the High Court had taken the plea and conducted the preliminary hearing. He relied on the case of **Richard Sipriano & another v. Republic**, Criminal Appeal No. 50 of 2013, CAT (unreported). He opined that in the circumstances, his clients were prejudiced because the cautioned statements of the first, second, third and fourth appellants were tendered before the Judge at the time preliminary hearing was conducted but were relied upon by the trial court. In view of that, Mr. Kwagilwa submitted that there is no valid appeal before this Court because the PRM with Ext J had no jurisdiction to try the case. He urged the Court to invoke the provisions of section 4 (2) of the Appellate Jurisdiction Act Cap 141 of the Revised Edition, 2002 (the AJA) resulting into quashing the proceedings, judgment and sentence imposed against the appellants and remit the record to the High Court for necessary action.

On the other hand, Ms Majaliwa submitted that she was entirely in agreement with the views expressed by her learned brother Mr. Kwagilwa. She

added that since the plea taking was done by the High Court, the case was wrongly transferred to the Court of Resident Magistrate with Extended Jurisdiction, and that after all, under section 256A (1) of the CPA the transfer ought to have been made to a specific Resident Magistrate with extended jurisdiction. She shared Mr. Kwagilwa's view that this Court invokes the provisions of section 4 (2) of the AJA, quash the proceedings, judgment and sentences imposed by the Resident Magistrate with Extended Jurisdiction on the appellants with a direction for the record to be remitted to the High Court for necessary orders.

After carefully considering the submissions of counsel for the parties, we deem it fit to begin with the provisions of section 256A (1) of the CPA under which the transfer was made. That provision instructs that:-

"(1) The High Court may direct that the taking of a plea and the trial of an accused person committed for trial by the High Court, be transferred to, and be conducted by a resident magistrate upon whom extended jurisdiction has been granted under subsection (1) of section 173."

In the case of **Hamisi Mchachali v. Republic** relied upon in **Richard Sipriano & another v. Republic** (supra), the Court was clear that “transfer” under section 256A(1) of the CPA means transfer of every aspect of the case, that is, taking the plea, preliminary hearing and the trial. In that case, the Court stressed that:-

“. . . any transfer of a case for trial from the High Court to a Resident Magistrate with Extended Jurisdiction should be effected before the plea is taken and preliminary hearing is conducted. . . . This is so because and as has been stated by this Court in its various decisions, 'preliminary hearing proceedings are part and parcel of the trial of case'. . . . The rationale behind this is that in a preliminary hearing important issues of fact may be agreed upon which later form the basis of the decision of the case. . . .” [Emphasis provided].

See also the cases of **Richard Sipriano & another v. Republic** (supra) and **John Madutule @ Ngosha v. Republic**, Criminal Appeal No. 132 of 2012, CAT (unreported). In the latter case of **John Madutule @ Ngosha v. Republic**, the Court said that:-

"The language used in section 256A (1) above is clear and straight forward. It needs no interpretation. It simply says that a transfer of a case pending in the High Court to a Resident Magistrate's Court ought to be done before a plea of the accused is taken. . . . "

In the case of **Abrahaman Ramadhani @ Chino v. Republic**, Criminal Appeal No. 130 of 2013, CAT (unreported), the Court emphasized that:-

*"from the reading of section 256A(1) and 173(1) (a) and (b) of the Criminal Procedure Act, it is clear that the transfer of the case from the High Court to the Court of Resident Magistrate **must be directed to a specific magistrate conferred with extended jurisdiction to hear such case.**" [Emphasis added].*

In view of the above, we agree with Mr. Kwagilwa and Ms Majaliwa that the Principal Resident Magistrate with Extended Jurisdiction lacked jurisdiction to try that case for two reasons: **one** that, it was transferred to him after the High Court had taken the plea and conducted the preliminary hearing; and **two** that, it was not specifically transferred to B. B. Mwingwa, the Principal Resident Magistrate with Extended Jurisdiction as it ought to have been. In the

circumstances, the trial of that case by him was a serious irregularity which rendered the proceedings, judgment and sentences which were meted by that court to the appellants a nullity. It is on this basis that Mr. Kwagilwa urged us to invoke our revisional jurisdiction and correct the obvious faults. With respect, we think that is the correct measure to be taken.

For reasons we have given above, we invoke the revisional powers conferred upon the Court under section 4 (2) of the AJA and quash the proceedings, judgment and sentences the trial court meted against the appellants. We consequently direct that the record in this regard be remitted to the High Court at Arusha for continuation of the process of law.


DATED at ARUSHA this 17th day of September, 2014.

E. A. KILEO
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

B. M. MMILLA
JUSTICE OF APPEAL

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


E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL