

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

CORAM: KILEO, J.A., MBAROUK, J.A., And MASSATI, J.A.

CRIMINAL APPEAL NO. 368 OF 2014

PASCHAL LALA.....APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

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

(Rutatinisibwa PRM Ext. J.)

**Dated 6th day of February, 2014
in
Criminal Appeal No. 4 of 2014
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JUDGMENT OF THE COURT

3rd & 8th June, 2015

MBAROUK, J.A.:

The appellant, Paschal s/o Lala was charged with and convicted of the offence of murder contrary to section 196 of the Penal Code by the Resident Magistrate Court of Dodoma sitting at Dodoma (Rutatinisibwa, PRM Ext, Juris.). He was sentenced to the mandatory punishment to suffer death by hanging. Undaunted, he has preferred this appeal.

The appellant lodged a memorandum of appeal containing three grounds of complaint, namely:-

- 1. THAT, the trial magistrate erred in law and in fact in convicting the appellant basing on the unreliable evidence.*
- 2. THAT, trial magistrate erred in law and in fact in holding that the appellant was properly identified.*
- 3. THAT, the trial magistrate erred in law and in fact in failing to hold that the killing was in the cause of fight and thus the appellant could be convicted of manslaughter.*

In this appeal, the appellant was represented by Mr. Kuwayawaya S. Kuwayawaya, learned advocate, while Mr. Angaza Mwipopo, learned Principal State Attorney represented the respondent/Republic.

When the appeal was called on for hearing, this Court wanted to satisfy itself on the propriety of the appeal. This was for the reason that, the record of appeal showed that initially the conduct of the case was started by Kwariko, J. as shown at page 40 of the record where she took the

appellant's plea and thereafter the preliminary hearing on 12-08-2009. At the page 49 it is on record that on 08-01-2014 the judge in-charge transferred the case to be heard by R.I. Rutta, Principal Resident Magistrate-Extended Jurisdiction. Then on 15-01-2014, the PRM-Extended Jurisdiction continued with the case until 06-02-2014 when he wrote a judgment which led the appellant to be convicted and sentenced. We are of the opinion that, that was in violation of the provisions of section 256A(1) of the Criminal Procedure Act, Cap.20 R.E. 2002 (the CPA).

In response to the matter raised by the Court, Mr. Kuwayawaya (Rev.) readily conceded that the transfer of the case from the High Court to the PRM – Extended Jurisdiction after the plea and preliminary hearing which was conducted by the judge was contrary to section 256 A(1) of the CPA. He therefore urged us to invoke revisional jurisdiction conferred upon us under section 4(2) of the Appellate Jurisdiction Act and nullify the whole proceedings conducted by the PRM – Extended Jurisdiction and consequently order a re-trial. He

then cited to us the decision in the case of **Hamisi Mchachali v. Republic** Criminal Appeal No. 205 of 2006 and **Enock Shilla V. Republic**, Criminal Appeal No. 193 of 2008 (both unreported).

On his part, the learned Principal State Attorney conceded that the provisions under section 256A (1) of the CPA were violated and that renders the proceedings handled by the PRM-Extended Jurisdiction to be irregular and therefore incompetent. For that reason, he urged us to nullify all the proceedings from where the PRM- Extended Jurisdiction was given transfer certificate to where he wrote his judgment which convicted and sentenced the appellant. He then urged us to order a re-trial. In support of his contention he cited to us the decisions of this Court in the case of **John Madutule @Ngosha v. Republic**, Criminal Appeal No. 132 of 2012 and **Dilala Gidabulgada v. Republic**, Criminal Appeal No. 172 of 2014 (both unreported).

Section 256A (1) of the CPA provides as follows:

"The High Court may direct that the taking of the 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."

There is a string of the decisions of this Court concerning the interpretation of section 256A (1) of the CPA. For example, See **John Madutula @ Ngosha v. Republic** (supra), **Dilala Gidabulgada v. Republic** (supra) **Enock Shila v. Republic** (supra) to name a few.

In the case of **Hamisi Mchachali v. Republic** (supra) this Court held:

*"It is our view 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. The same should be conducted by the PRM – Extended Jurisdiction. 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 caseThe rationale behind this is that in a preliminary hearing important issues of fact may be agreed upon which later form basis of the decision of the case" See **Majaliwa Guzuye v. Republic** Criminal Appeal No. 213 of 2004; **Juma Nyamwimwe v. Republic**, Criminal Appeal No. 42 of 2001). A Resident Magistrate with Extended Jurisdiction to whom a case has been transferred should therefore take the plea and conduct the preliminary hearing. In our view, a trial includes a preliminary hearing. As was stated in the **Nyamwimwe** case, 'it is not intended that the High Court will take a plea, conduct a preliminary hearing and then transfer the case to Resident magistrate with Extended Jurisdiction.' Rather, the transfer should be effected **before.**"*

In the instant case, the requirement under section 256A (1) of the CPA has been violated since the transfer of the conduct of the case from the High Court to the PRM-Extended Jurisdiction was made after the plea and preliminary hearing

was conducted. We are of the considered opinion that all what transpired before Rutatinisibwa, PRM-Extended Jurisdiction in this case was a nullity.

In the circumstances and for the reasons stated above we are constrained to exercise the powers conferred upon us under section 4(2) of the Appellate Jurisdiction Act and quash the proceedings before Rutatinisibwa, PRM-Extended Jurisdiction and set aside the orders made thereby. In the event, we order a re-trial of this case before a judge at the High Court. It is so ordered.

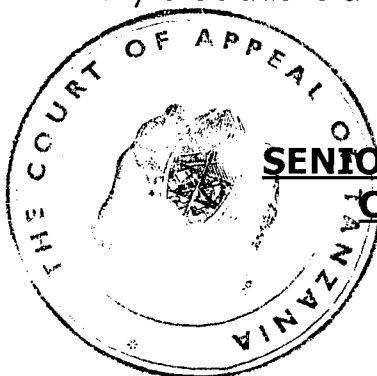
DATED at DODOMA this 05th day of June, 2015.

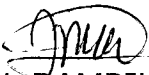
E.A. KILEO
JUSTICE OF APPEAL

M. S. MBAROUK
JUSTICE OF APPEAL

S.A. MASSATI
JUSTICE OF APPEAL

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




P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL