

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

CRIMINAL APPEAL NO. 120 OF 2014

(CORAM: RUTAKANGWA, J.A., MJASIRI, J.A., And KAIJAGE, J.A.)

MARWA MICHAEL APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the Decision/Judgment of the High Court of Tanzania
at Mwanza)**

(De-Mello, J.)

Dated 19th day of February, 2014

in

Criminal Appeal No. 64 of 2013

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JUDGEMENT OF THE COURT

24th & 30th November, 2015

KAIJAGE, J.A.:

Before the District Court of Tarime at Tarime, the appellant was arraigned for robbery. Following a full trial, he was convicted as charged and consequently sentenced to serve a term of fifteen (15) years imprisonment. His appeal to the High Court against both such conviction and sentence was unsuccessful, hence the present appeal.

Before us, the appellant appeared in person, fending for himself. The respondent Republic had the services of Mr. Lameck Merumba, learned State Attorney.

When the appeal was called on for hearing, we raised, **suo motu**, a point of law touching on the propriety and the validity of the trial court's proceedings taken and recorded in violation of the provisions under section 214 (1) of the Criminal Procedure Act, Cap 20 R.E 2002 (the CPA).

Addressing the point we raised, the learned State Attorney hastened to concede that the trial was conducted in violation of the provisions under section 214 (1) of the CPA, the successor trial Magistrate having acted on the proceedings and evidence recorded by his predecessor without there being any reason or reasons assigned and put on record to explain the latter's inability to complete the trial. Upon this unarguably incurable procedural infraction, the learned State Attorney urged us to nullify the proceedings conducted before the successor magistrate as well as the resultant judgement. In similar vein, he pressed us to nullify the subsequent proceedings and the judgement of the first appellate court based on the null proceedings and judgement of the trial court. In consequence thereof, he invited us to order a retrial.

Understandably, the appellant who is a layman made no significant response to the legal point we raised.

On our part, we are, with respect, in full agreement with the learned State Attorney. The law is now settled that the second or subsequent magistrate can assume the jurisdiction to take over, continue the trial and act on the evidence recorded by his/her predecessor only if the latter **is for any reason or reasons**, explicitly shown in the trial court's record of proceedings, unable to complete the trial at all or within a reasonable time. That is the spirit of section 214 (1) of the CPA which provides:-

*"S. 214 (1). Where **any Magistrate**, after having heard and recorded the whole or any part of the evidence in any trial or conducted in whole or part any committal proceedings, **is for any reason** unable to complete the trial or committal proceedings or he is unable to complete the trial or committal proceedings within a reasonable time, another magistrate who has and who exercises jurisdiction may take over and continue the trial or committal proceedings, as the case may be, and the magistrate so taking over may act on the evidence or proceeding recorded by his predecessor and may, in the case of a trial and if he considers it necessary, resummon the witnesses and recommence the trial or committal proceedings."*

[Emphasis ours].

In this case, it is gathered from the trial court's record of proceedings that a total of three (3) witnesses testified for the prosecution side. The trial commenced before Y.R. Ruboroga, R.M., who initially took and recorded the evidence of the first witness. The remaining two (2) prosecution witnesses testified before Odira Amworo, R.M., who completed the trial, composed the judgment and delivered the same. However, the record is dead silent on the reason/s why Ruboroga, R.M., could not complete the trial.

Consistent with the provisions of s. 214 (1) of the CPA, this Court in the unreported case of **PRISCUS KIMARO V. R**; Criminal Appeal No. 301 of 2013, had an occasion to underscore the need for putting on record the reasons for re-assignment of a partly heard matter to a successor trial magistrate. In that case, we said:-

*"We are of the settled mind that where it is necessary to re-assign a partly heard matter to another magistrate, **the reason for the failure of the first magistrate to complete the matter must be recorded.** If that is not done, it may lead to chaos in the administration of justice. Anyone, for personal reasons could just pick up any file and deal with it to the detriment of justice. This must not be allowed."*

[Emphasis ours].

In this case, there being no such reason/s assigned and put on record, we firmly hold that Odira Amworo, R.M., the successor magistrate, had no authority in terms of section 214 (1) of the CPA to take over, continue and complete the trial earlier commenced by Ruboroga, R.M., his predecessor. For certain, this was a fundamental procedural infraction, incapable of being cured under section 388 of the CPA.

As correctly submitted by the learned State Attorney, the irregularity in question has rendered a nullity, the trial proceedings conducted before and the judgment composed and delivered by Amworo, R.M. By parity of reasoning, the subsequent proceedings and the judgment of the first appellate court based on the said null proceedings and judgment of the trial court were also a nullity.

The above considered and in the exercise of our revisional powers under section 4 (2) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002, we hereby revise and quash all the proceedings beginning with those conducted before Amworo, R.M. as well as those of the first appellate court. That done, we consequently hereby set aside the conviction entered and the sentence meted out against the appellant and order that the appellant be expeditiously

retried, beginning from the date Amworo, R.M., took over the trial court's proceedings.

In the event Roboroga, R.M., before whom the trial commenced has ceased to have jurisdiction, we further hereby direct that the case be expeditiously tried afresh before another magistrate of competent jurisdiction.

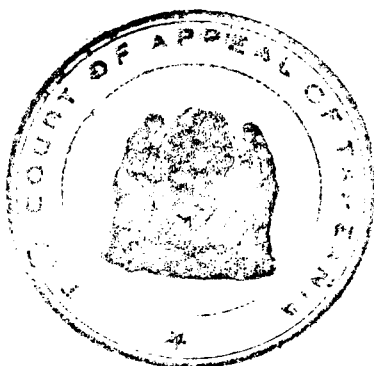
DATED at MWANZA this 27th day of November, 2015.

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

S. S. KAIJAGE
JUSTICE OF APPEAL

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



E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL