

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

MZA. CRIMINAL REVISION NO. 01 OF 2015

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

1. NHUNGWI PHILIPO 1ST APPLICANT
2. KARUME MAHUNGI 2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Application for Revision from the Order of the High Court of Tanzania
at Mwanza)**

(Mwangesi, J.)

**Dated 27th day of May, 2015
in**

HC. Criminal Session Case No. 221 of 2013

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ORDER OF THE COURT

23rd Nov. & 2nd December, 2015

MJASIRI, J.A.:

This is a curiously styled application for revision. The application was placed before this Court for **orders/and or direction** following the order of the High Court (Makaramba,J) dated August 19, 2015. The said order was made when the matter came up for trial. It is reproduced as under:

"Court:

In view of the fatal irregularities in the conduct of the preliminary hearing, in that whereas the two accused persons stood charged for the offence of attempted murder before the committal court, at the preliminary

hearing before the High Court they were arraigned for the offence of attempted murder but pleaded to murder and without any plea which was entered by the presiding judge in respect of the plea. That being the case and given that this court cannot quash its own preliminary proceedings I shall make the following orders:-

Order

- 1. The record of this case shall be referred to the Court of Appeal for appropriate orders and/direction.*
- 2. The Deputy Registrar of the High Court, Mwanza to cause the matter to be filed at the sub-registry of the court of appeal at Mwanza as reference of the Court of Appeal.*
- 3. The two accused persons shall further be remanded in custody while awaiting determination of the matters by the Court of Appeal.*
- 4. The Deputy Registrar of the High Court shall immediately schedule the case for appropriate orders following decision of the Court of Appeal."*

The background to this matter is as follows. In the High Court of Tanzania at Mwanza, Nhungwi Philipo and Karume Mahugija were charged with the offence of attempted murder contrary to section 211 of the Penal Code, Cap 16, R.E. (the Penal Code). The preliminary hearing was

conducted and finalized by Mwangesi, J, on May 27, 2014. The accused persons were awaiting trial.

When the matter came up for trial, Mr. Otieno, learned advocate for the accused persons informed the Court that during the preliminary hearing, a charge of murder was read to the accused persons instead of that of attempted murder. Mr. Otieno did not represent the accused persons at the preliminary hearing. The learned trial judge considered this as a fatal irregularity in the conduct of the preliminary hearing and made the order to have the record placed before this Court.

At the hearing the accused persons appeared in person and were unrepresented and the Republic had the services of Ms. Bibiana Kileo, learned Senior State Attorney.

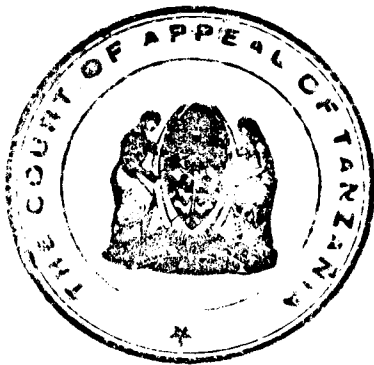
According to the learned Senior State Attorney, the Republic has never filed any information for murder in this case. The accused persons were facing a charge of attempted murder, and it was the same charge which was read to the accused persons during the preliminary hearing. She contended that there was no order to be revised. She requested the Court to return the record to the High Court to proceed with the trial.

the accused persons.

The terms and conditions of bail granted to both accused persons to prevail. The accused persons are to be released from custody with immediate effect unless otherwise lawfully held, under the terms and conditions of bail dated August 2, 2011.

Order accordingly.

DATED at MWANZA this 1st day of December, 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