

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: MBAROUK, J.A., JUMA, J.A. And MZIRAY, J.A.)

CRIMINAL REVISION NO. 3 OF 2015

THE REPUBLICAPPLICANT

VERSUS

HANA D/O MUHELELWA RESPONDENT

**(Application for Revision from the Order and Proceedings of
High Court of Tanzania at Iringa)**

(Mkuye, J.)

Dated 1st day of November, 2011

In

Criminal Session Case No. 18 of 2010

RULING OF THE COURT

3rd & 16th December, 2015

MBAROUK, J.A.:

These are revision proceedings initiated by the Court acting *suo motu* on the basis of information from Rehema K. Mkuye, the Judge of the High Court of Tanzania at Iringa. The information relates to the proceedings in Criminal Session No. 18 of 2010 where the preliminary hearing (PH) proceedings were conducted contrary to the law.

For proper appreciation of the circumstances in which the Court was prompted to take this course of action it is

convenient to set out the background of the matter briefly. The accused, Hana d/o Muhelelwa, was in the High Court of Tanzania at Njombe (Criminal Session Case No. 18 of 2010) charged with the offence of murder contrary to section 196 of the Penal Code, Cap. 16, R.E. 2002. It was alleged that on 1st day of December, 2007 at Usuka Village in Njombe, she murdered a five year old Eliza d/o Mfumbilwa.

Record of the trial proceedings show that on 22nd July, 2010 when the information was read over to the accused and she was required to plead thereto, her learned advocate, Mr. Onesmo intervened before she could and moved the trial court to send her to the mental hospital, where he stated as follows:-

"I have talked to the accused person, the way it looks like she cannot understand the proceedings. I pray under Section 220 (1) of the CPA 1985 Cap. 20 R.E. 2002, to make the necessary orders to be sent to Isanga Institution".

Miss K. Maziku, the learned State Attorney expressed no objection to the prayer. Uzia, J. ordered the accused person to be detained in a mental hospital for medical examination. Fifteen months later on 1st November, 2011 the accused person was again brought before Mkuye, Judge of the High Court at Iringa when information for murder was read out to her, she pleaded "Ni kweli" (It is true). Mr. Rwezaula, learned advocate who represented the accused, informed the trial court that although the accused person had pleaded guilty, he regarded her to be insane and she did not also understand what she was saying. All the same, Mr. Rwezaula prayed for the case to proceed. Mkuye, J. who was presiding, while not sure about the certainty of the accused person's plea and state of her sanity, all the same ordered the preliminary hearing to proceed ahead. That was a brief background to this revision proceedings.

At the commencement of the hearing of this matter, Mr. Tumaini Kweka, the learned Principal State Attorney who was assisted by Ms. Honorina Mushi, learned Senior State Attorney

who both represented the applicant/Republic urged the Court to examine the correctness and legality of the order of the High Court of Tanzania at Iringa in Criminal Session Case No. 18 of 2010 dated 1/11/2011. He submitted that it was an irregularity for the trial judge to proceed with the preliminary hearing without first receiving the findings of the report of the medical officer in charge of the mental hospital who had examined the accused. He submitted further that, because Uzia, J. had earlier ordered the accused to be medically examined in a mental hospital, the report of that examination must have been presented before the trial court. It was therefore an irregularity not to admit the report, he submitted.

The second irregularity highlighted by Mr. Kweka was the failure of the trial judge to make her own findings on that report after admitting the same. He said, those requirements of the provisions of the law were not complied with by the trial High Court and that was not proper. In support of his argument, he cited to us the decisions of this Court in the

case of **Hilda Abel v. Republic** [1993] TLR 346 and **Venanti Aporinary vs. Republic**, Criminal Appeal No. 41 of 2008 CAT Mwanza (unreported).

For such non compliance with the provisions of section 220 (3) and (4) of the CPA, Mr. Kweka urged us to invoke section 4(3) of the Appellate Jurisdiction Act (the AJA) and quash the order of the High Court held at Iringa dated 01/11/2011 in Criminal Session No. 18 of 2010 and further order the matter to be remitted back to the High Court so as to comply with the requirements stated in the provisions of section 220 (3) and (4) of the CPA.

So as to understand the position of the law in a situation stated above, we have found it proper to reproduce the relevant parts of section 220 of the CPA which state as follows:-

"220 (1) Where any act or omission is charged against any person as an offence and it appears to the court during the trial of such person for that offence that such person may

*have been insane so as not to be responsible for his action at the time when the act was done or omission made, **a court may, notwithstanding that no evidence has been adduced or given of such insanity, adjourn the proceedings and order the accused person to be detained in a mental hospital for medical examination.***

(2)

(3) Where the court admits a medical report signed by the medical officer in charge of the mental hospital where the accused was detained the accused and the prosecution shall be entitled to adduce such evidence relevant to the issue of insanity as they may consider fit.

(4) If, on the evidence on record, it appears to the court that the accused did the act or made the omission charged but was insane so as not to be responsible for his action at the time when the act was done or

omission made, the Court shall make finding in accordance with the provisions of subsection (2) of section 219 and all the provisions of section 219 shall apply to every such case.”

[Emphasis added]

There is no doubt that Mkuye, J. failed to comply with the requirements under section 220 (3) and (4) of the CPA, and having noted that anomaly, the learned Judge herself informed the Hon. Chief Justice who then arranged for the hearing of this revision proceedings. As shown above, the order of the trial Judge dated 01/11/2011 failed to comply with the requirements under section 220 (3) and (4) of the CPA. For that main reason, we are constrained to invoke our revisional powers conferred upon us under section 4(3) of the AJA and quash the order dated 1/11/2011 in High Court Criminal Session case No. 18 of 2010 held at Iringa. Furthermore, we are constrained to order the matter to be remitted back to the High Court of Tanzania at Iringa before another Judge so that the proceedings to be conducted in

accordance with the requirements of the provisions of the law. It is so ordered.

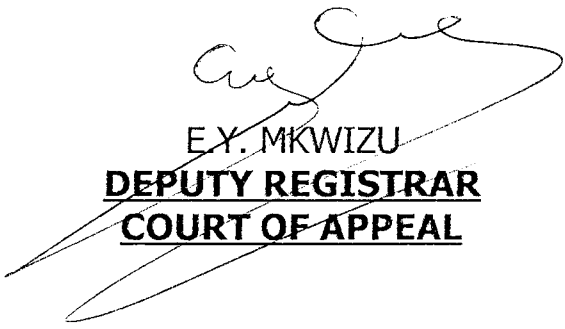
DATED at **DAR ES SALAAM** this 10th day of December, 2015.

M. S. MBAROUK
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

R.E. MZIRAY
JUSTICE OF APPEAL

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



E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL