

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MASSATI, J.A., ORIYO, J.A., And MUGASHA, J.A.,)

CRIMINAL REVISION NO. 4 OF 2015

THE REPUBLIC.....APPLICANT

VERSUS

1.NELSON MBALANJI

2.NKUMBUSHE MWALYEGO

3.ISIKIKA DEULE

4.MASHAKA NDOLA

.....RESPONDENTS

(Revision from the Proceedings and order of the
High Court of Tanzania at Mbeya
(Chocha, J.)

dated 9th day of October, 2013 to 21st November, 2013
in
Criminal Sessions Case No. 6 of 2013

RULING OF THE COURT

23rd February, & 14th March, 2016

ORIYO, J.A.:

The revisional proceedings arise from the High Court of Mbeya sitting at Mbarali, in Criminal Sessions Case No. 6 of 2013, (Chocha, J.).

The respondents were jointly charged of murder contrary to section 196 of the Penal Code. They were arraigned before the High Court. In the course of conducting the trial, the presiding trial judge, (Chocha, J.),

realized that the respondents were never committed to the High Court for trial, in terms of section 246 (1) of the Criminal Procedure Act, Cap 20 R.E.2002. There was no formal committal order on record issued by the District Court of Mbarali at Rujewa (subordinate court), where the respondents were arraigned pending trial before the High Court. The High Court was therefore seized with the matter without jurisdiction. Having noted the error, the presiding judge forwarded the Record of proceedings to this Court for the same to be revised or for appropriate directions; hence these revisional proceedings.

At the hearing before us, Ms Monica Mbogo learned Principal State Attorney appeared for the applicant. All the respondents were in attendance and had legal representations from Mr. Samson Mbamba, learned advocate for the first and second respondents. Mr. Respicius Didace learned counsel appeared for the third and fourth respondents.

Relying on the Court's decision in **Republic vs Asafu Tumwine** (CAT MZA), Criminal Revision No. 1 of 2006, (unreported); an appeal which arose from similar circumstances as in this case; both sides in the

revisional proceedings prayed that we proceed in line with TUMWINE's Revision. They urged the Court to quash and set aside the proceedings before Chocha, J. and start *de novo* from the District Court.

Section 178 of the Criminal Procedure Act provides as follows:-

*"178. The High Court may inquire into and try any offence subject to its jurisdiction in any place where it has power to hold sittings; and except as provided, under section 93, no **criminal case shall be brought under cognizance of the High Court unless it has been previously investigated by a subordinate court and the accused person has been committed for trial before the High Court.**"*

(Emphasis supplied)

There is no gainsaying that an accused person is not properly before the High Court in a murder trial in the absence of a formal committal order by the subordinate court where the accused was arraigned; see sections 178, 246, 247, 249, of the Criminal Procedure Act. The record before us show that the learned District Resident Magistrate (DRM), read over and explained to the respondents the information filed against them as well as the

contents of two statements containing the substance of the evidence of witnesses intended to be summoned at their trial before the High Court. Thereafter the accused were asked if they have anything to say and they all replied in the negative. Thereafter, the learned DRM stated the following:-

COURT: Committal proceedings closed.

ORDER: All accused be remanded in custody, pending the High Court Sessions”

SIGNED

DRM

10/4/2013

Going by the record, these were the subordinate court proceedings, which were sent to the High Court Mbeya and led to the premature birth of Criminal Sessions Case No. 6 of 2013.

Having observed that the subordinate court of Mbarali did not commit the respondents for trial before the High Court, those proceedings were rendered a nullity. In the event, we quash and set aside the purported proceedings before the High Court. We further order that the District

Court of Mbarali to hold fresh preliminary proceedings and commit the respondents for trial before the High Court, Mbeya; according to law.

DATED at **DAR ES SALAAM** this 9th day of March, 2016.

S. A. MASSATI
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

S.E. MUGASHA
JUSTICE OF APPEAL

I certify that this is a true copy of the original


Z.A. MARUMA
DEPUTY REGISTRAR
COURT OF APPEAL