

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: RUTAKANGWA, J.A., LUANDA, J.A. And MWARIJA, J.A.)

CRIMINAL APPEAL NO. 51 OF 2015

GEORGE JAILOS APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Dar es Salaam.)

(Rusema, PRM – Extended Jurisdiction)

dated the 12th day of December, 2014

in

Criminal Session Case No. 24 of 2011

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JUDGMENT OF THE COURT

22nd & 28th June, 2016

LUANDA, J.A.:

Initially the appellant George Jaillos was charged in the High Court of Tanzania sitting at Dar es Salaam with murder. The High Court (Munisi, J.) took the plea of the appellant and conducted a preliminary hearing. On completion, the case was adjourned to another Court Session for hearing. That was on 27/11/2012.

On 17/11/2014 the case landed in the hands of Rusema, PRM - Extended Jurisdiction. The record of appeal shows that the case was assigned another number namely Extended Jurisdiction No. 20/2014 but indicated it was still in the High Court of Tanzania! The record shows thus:-

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM.

EXTENDED JURISDICTION NO. 20 OF 2014

ORIGINAL JURISDICTION CRIMINAL SESSION CASE NO. 24 OF

2011

REPUBLIC

VERSUS

GEORGE JAILOS

Rusema, PRM - Extended Jurisdiction heard the case and delivered judgment. The appellant was convicted as charged and sentenced to suffer death by hanging.

Aggrieved by the finding and sentence of the trial court, the appellant has come to this Court on appeal.

In this appeal, the appellant was represented by Mr. Florence Tesha, learned advocate; whereas the Republic/Respondent was represented by Mr. Othman Katuli assisted by Ms. Ester Martin, learned Senior State Attorney and State Attorney respectively.

The appellant himself filed a memorandum of appeal consisting of twelve grounds. Mr. Tesha, however, prayed to drop a number of grounds. We did not accede to his request. Instead we drew his attention to an obvious procedural irregularity which in fact goes to the issue of jurisdiction whether the trial Principal Resident Magistrate – Extended Jurisdiction had jurisdiction to try the case. Luckily the Republic had filed two authorities before the commencement of the appeal, which should have alerted him on the line of argument the Republic would have advanced. Unfortunately and for reason we failed to comprehend, Mr. Tesha was unable to grasp until when we shortly adjourned the hearing of the appeal. On resumption, he told the Court that after Munisi, J. had taken the plea of the appellant and conducted a preliminary hearing, it was not proper in law vide S. 256 A (1) of the Criminal Procedure Act, Cap. 20 R.E. 2002 (the CPA) to transfer the case to a Resident Magistrate with Extended Jurisdiction. He went on to say, if the case is transferred to be

tried by a Resident Magistrate – with Extended Jurisdiction, then it should start by taking the plea of the accused person and the conduct of the preliminary hearing.

On the other hand, Mr. Katuli joined hands with Mr. Tesha. He added that the order of transfer was wrong. He prayed that the proceedings be quashed and a retrial be ordered to commence from the order of Munisi, J. of 27/11/2012.

We have carefully read the record of appeal as well as the original record. First and foremost, we wish to point out that there is no order of transfer of the case made by the Judge Incharge directing the case to be heard by Rusema, PRM – Extended Jurisdiction as per requirement of section 256A (1) of the CPA. The section provides:-

*256A (1) The High Court may **direct the taking of a plea 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.***

[Emphasis supplied].

Second, if there is such transfer then it should be done before the taking of plea of the accused person. In our case, we have seen that there is no order of transfer made. We cannot tell how Rusema, PRM – Extended Jurisdiction came about the case and tried it in the absence of such an order of transfer! In terms of section 256A (1) of the CPA reproduced supra, a Resident Magistrate with Extended Jurisdiction to whom a case has been transferred, is required to sit in the very court where he has jurisdiction and not in the High Court, take plea and then proceed with hearing, including conducting a preliminary hearing. It is not the intention of the section that the High Court take a plea, conduct a preliminary hearing, then transfer the case to a Resident Magistrate with Extended Jurisdiction for trial. This position was made clear in **Juma Lyamwiwe vs R.**, Criminal Appeal No. 42 of 2001, the Court said:-

*"... it is not intended that the High Court will take a plea, conduct a preliminary hearing and then transfer the case to a Resident Magistrate with Extended Jurisdiction. Rather, the transfer should be effected before." (See also **Dilala Gidabulgalda vs R.**, Criminal Appeal No. 172 of*

2014; Ezra Mkota and Another vs R., Criminal

Appeal No. 23 of 2013 (Both unreported).

As a whole we agree with Mr. Katuli and Mr. Tesha that section 256A (1) of the CPA was not at all complied with. Therefore, Rusema, PRM – Extended Jurisdiction had not jurisdiction to try the case. The entire proceedings conducted by Rusema, PRM – Extended Jurisdiction is a nullity. The same are quashed and both conviction and sentence are set aside. We order the High Court to proceed with trial from the order of Munisi, J. dated 27/11/2012.

Order accordingly.

DATED at DAR ES SALAAM this 24th day of June, 2016.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

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




E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL