

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

(CORAM: KILEO, J.A., ORIYO, J.A., And JUMA, J.A.)

CRIMINAL APPEAL NO. 581 OF 2015

SELEMANI JUMA KARANI APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the Judgment and conviction of the Resident Magistrate Court
of Singida at Singida)**

(H.A. Shaidi, PRM – Extended Jurisdiction)

dated the 9th day of November, 2015

in

HC. Criminal Sessions Case No. 92 of 2010

JUDGMENT OF THE COURT

4th April, & 6th April, 2016

KILEO, J.A.:

The appellant was convicted of murder contrary to section 196 of the Penal Code, Cap 16 R. E. 2002 and sentenced to death by hanging in the Resident Magistrate’s Court of Singida at Singida vide PRM Criminal Sessions case No. 10 of 2012 (H. A. Shaidi, Principal Resident Magistrate, Extended Jurisdiction (PRM, EJ). Being aggrieved, he has come to this Court through the services of Mr. Hubert Lubyama, learned advocate who

filed a memorandum of appeal comprising of four grounds. At the hearing of the appeal the respondent Republic was represented by Ms. Rosemary Shio, learned Principal State Attorney.

Before we had proceeded to hearing the appeal on merit, having realized that the case was tried in the Resident Magistrate's Court by Hon. Shaidi, PRM, EJ, we wanted to satisfy ourselves first that the trial magistrate was vested with jurisdiction to hear the case and in that regard we invited both Mr. Lubyama and Ms. Shio to address us on the issue.

A brief background to the matter will be useful in appreciating the matter before us. On 2nd December 2010 an information for murder against the appellant was filed in the High Court of Tanzania at Dodoma. On 16 April 2012 the High Court acting under the provisions of section 256A (1) of the Criminal Procedure Act, Cap 20 R. E. 2002 (CPA) transferred the case to Hon. R. I. Rutatinisibwa, PRM, EJ. On 2/5/2012 Rutatinisibwa, PRM, EJ took the appellant's plea and conducted a preliminary hearing. After the preliminary hearing was conducted the PRM, EJ adjourned the case to the next sessions. When the matter came up next for hearing which was on 2/11/2015 it was presided over by Hon. H. A. Shaidi, PRM, EJ who proceeded with the trial which culminated in the decision which is being

appealed against. There is nothing on record showing how the matter landed into Hon. Shaidi's hands.

Both Mr. Lubyama and Ms. Shio were of the view that in the absence of any certificate transferring the case for trial by Hon. Shaidi, PRM, EJ the whole trial, conviction and sentence was rendered a nullity. We were advised in the circumstances to exercise powers conferred upon the Court pursuant to section 4 (2) of the Appellate Jurisdiction Act, Cap 141 R. E. 2002 (AJA) to quash and set aside the whole proceedings conducted by Shaidi, PRM, EJ and remit the case to the High Court for it to continue with the matter in accordance with the law.

We are in complete agreement with the views expressed by both Ms. Shio and Mr. Lubyama. Section 256A (1) vests the High Court with powers to transfer a case to a specific resident magistrate upon whom extended jurisdiction has been vested by the Minister pursuant to section 173 (1) of the CPA. Section 256A (1) states:

“(1) The High Court may direct that the taking of a plea and the trial 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.”

We had an opportunity to deal with a similar situation in Criminal Appeal No 194 of 2012 between **Masana Mwita @ Marwa and the Republic** (unreported). In that case we emphasized that where the High Court decides to invoke its powers under section 256A (1) of the CPA then the specific magistrate upon whom the case is transferred must be named in the transferring direction. We further stated:

".....section 256A envisages that the magistrate exercising extended powers to whom a case is transferred must take the plea as well conduct the trial. We will hasten to add that the PRM EJ to whom the case has been transferred as above must take the plea and conduct the trial to completion unless for some reason, which must appear on the record, the PRM EJ who had started to deal with the matter is unable to proceed with it to the end."

The above has been our holding consistently. See for example, Criminal Appeal No. 291 of 2013 – **Thomas Gasper Mchamisi v. the Republic** and **Abraham Ramadhani @ Chino v. the Republic**, Criminal Appeal No. 130 of 2013 (unreported.) In the latter case we stated:

"From the reading of section 256A (1) and 173 (1) (a) and (b) of the Criminal Procedure Act, it is clear that the transfer of the case from the High Court to the Court of Resident Magistrate must be directed to a specific magistrate conferred with extended jurisdiction to hear such a case."

And in the former we stated:

*"The emphasis in this authority is that even if there is a transfer order, it must be directed at a particular magistrate for it to be valid. Where there is no transfer order at all, as has happened in the preliminary hearing and the trial, the illegality is compounded. We would go further. Section 256A (1) envisages that the magistrate exercising extended powers to whom a case is transferred must take the plea **as well as conduct the trial**. The use of the word **and** in the section means it is used in the injunctive sense, not the disjunctive sense. Even if, therefore, there was a valid transfer order, section 256A (1) did not allow three magistrates to participate in the case, with one taking the plea, another one conducting the preliminary hearing and the third one conducting the trial."*

Given our previous holdings as above, there is no gainsaying that the whole proceedings conducted by Shaidi PRM, EJ were a nullity as he was not vested with jurisdiction to hear the matter there being no certificate of transfer to him of the case which otherwise is only triable by the High Court. In the circumstances we have no other option to take but exercise

powers conferred upon us under section 4 (2) of the AJA to quash and set aside, as we hereby do, the whole proceedings conducted by Shaidi, PRM, EJ including the conviction and sentence.

We have considered whether to remit the matter to Rutatinisibwa to whom the case was initially transferred but upon reflection we think that this might not be viable. In the circumstances we also quash and set aside the proceedings that were conducted by Rutatinisibwa PRM, EJ. The order of transfer to Rutatinisibwa also goes. In the end we order a remittance of the case to the High Court for it to proceed with the matter in accordance with the law.

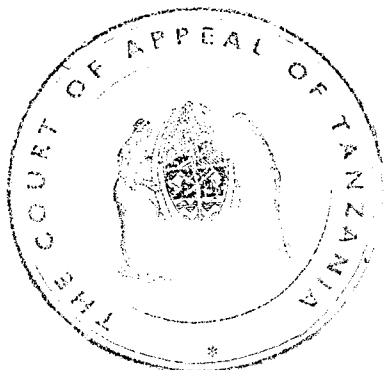
DATED at DODOMA this 05th Day of April 2016.

E. A. KILEO
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

I. H. JUMA
JUSTICE OF APPEAL

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




E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL