

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DODOMA**

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

**CRIMINAL APPEAL NO. 266 OF 2015**

**SAID SUI ..... APPELLANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

**(Appeal from the judgment of the Resident Magistrate’s Court (Extended Jurisdiction) of Dodoma**

**(R.I.RUTTA, PRM Ext, J.)**

**Dated the 2<sup>nd</sup> day of August, 2013**

**in**

**Criminal Appeal No. 1 of 2013**

.....

**JUDGMENT OF THE COURT**

6<sup>th</sup> & 11<sup>th</sup> April, 2016

**KILEO, J.A.:**

In the District Court of Singida, the appellant was charged with and convicted of rape contrary to sections 130 (1) (2) (b) and 131 (1) of the Penal Code Cap 16 of the Revised Edition of 2002. He was sentenced to serve thirty (30) years imprisonment. He appealed to the High Court which transferred his case to Rutatisinibwa, a Principal Resident Magistrate with Extended Jurisdiction (PRM, EJ). The PRM, EJ dismissed his appeal. Aggrieved, he has preferred this appeal which is against both conviction and sentence.

The charge sheet alleged that on 25<sup>th</sup> day of March, 2010 at about 21:00 hours at Mtipa village within the District and Region of Singida the appellant did unlawfully have sexual intercourse with Tatu Soa a woman of 75 years without her consent.

The appellant appeared before us in person and unrepresented. The respondent Republic was represented by Ms. Beatrice Nsana learned State Attorney. She was assisted by Mr. Morice Sarara, also learned State Attorney.

Before we had proceeded to the hearing of the grounds of appeal we called on both the learned State Attorneys and the appellant to address us on the takeover, by other magistrates, without assignment of any reasons for failure of the first magistrate to handle the matter to completion. Mr. Sarara submitted that the proceedings of the trial court contravened the provisions of section 214 (1) of the Criminal Procedure, Cap 20 RE 2002 (CPA) as the case was handled by three different magistrates without indicating any reason therefor.

The record shows that the trial commenced before A. H. Mwetindwa RM who heard all the prosecution witnesses and one defence witness, the appellant himself. On 21.05.2012 R.B. Massamu SRM heard the second and

by Massamu, SRM. Massamu SRM went on to compose the judgment. The judgment was however delivered, and sentence imposed, by C.M.Tengwa RM. Again, no reasons were given for the takeover of the case by Tengwa RM.

Relying on the case of **Abdi Masoud Iboma and 3 others V. Republic** Criminal Appeal No.116 of 2015, (unreported) Mr. Sarara submitted that change of magistrates in a case without assignment of any reason amounted to a fatal irregularity and thus, asked this Court to invoke the provisions of section 4 (2) of the Appellate Jurisdiction Act, Cap 141 R.E 2002 (AJA) to revise the proceedings and the judgment of the PRM, EJ as well as the trial court and order the case to be remitted back to the trial court for continuation from where the first magistrate ended.

On the other hand, the appellant, a lay person had nothing to say given the fact that the observation by the Mr. Sarara was in fact a legal observation.

On our part, we agree with Mr. Sarara, that the proceedings in the trial court offended the provisions of section 214 (1) of the CPA. As the proceedings in the trial court were seriously flawed the proceedings and

judgment of the first appellate court which flowed from the flawed trial court's proceedings were of no consequence.

Section 214 (1) of the CPA states:

**“(1) Where any magistrate, after having heard and recorded the whole or part of or any part of the evidence in any trial or conduct in whole or part any committal proceedings, is for any reason unable to complete the trial or the committal proceedings or he is unable to complete the trial or committal proceedings within a reasonable time, another magistrate who has and who exercises jurisdiction may take over and continue the trial or committal proceedings, as the case may be and the magistrate so taking over may act on the evidence or proceeding recorded by his predecessor and may, in the case of a trial, and if he considers it necessary resummon the witnesses and recommence the trial or the committal proceedings.”**

In **Abdi Masoud Iboma and 3 others V. Republic**, supra, the Court in discussing the above section stated;-

*"..The provision requires that reasons be laid bare to show why the predecessor magistrate could not complete the trial. In the absence of any such reasons, the successor magistrate lacked authority and jurisdiction to proceed with the trial and consequently all such proceedings before him were nullity."*

The Court in the above case made reference to **Priscus Kimaro v. R** Criminal Appeal No. 301 of 2013 (unreported) where it had occasion to comment on a similar situation and directed that:

*" . . . where it is necessary to reassign a partly heard matter to another magistrate, the reason for the failure of the first magistrate to complete must be recorded. If that is not done, it may lead to chaos in the administration of justice. Anyone, for personal reasons could just pick up any file and deal with it to the detriment of justice. This must not be allowed."*

In **Abdi Masoud Iboma** the Court further stated:

*record the reasons for reassignment or change of trial magistrates. It is a requirement of the law and has to be complied with. It is a prerequisite for the second magistrate's assumption of jurisdiction. If this is not complied with, the successor magistrate would have no authority or jurisdiction to try the case. Since there is no reason on record in this case as to why the predecessor trial magistrate was unable to complete the trial, the proceedings of the successor magistrate were conducted without jurisdiction, hence a nullity."*

In the present case the trial of the appellant was handled by three different magistrates with no reasons whatsoever being assigned for the change of any of the magistrates. This means that the two successor magistrates, in the absence of reasons for the takeover, lacked jurisdiction to try the case. The irregularity as we have already endeavored to show was fatal.

In the circumstances, there is no other option for us to take but to exercise our powers of revision under section 4 (2) of the AJA to quash and set aside the proceedings of the PRM EJ which flowed from proceedings that were flawed in the first place. Acting under the same powers we

quash and set aside all proceedings in the trial court (including the conviction and sentence) which followed after the first trial magistrate had recorded the evidence of the first defence witness. We order a remittance of the case to Mwetindwa, RM to complete the trial from where she left unless for some reason, to be recorded, she is unable to do so.

In the event a conviction is arrived at upon completion of hearing of the evidence, the time that the appellant has spent in jail should be deducted from the sentence that will be imposed. As this is an old criminal case, priority should be given in dealing with the matter in the subordinate courts.

It is ordered accordingly.

**Dated at Dodoma** this 8<sup>th</sup> 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. FOSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**

