

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

(CORAM: LUANDA, J.A., MZIRAY, J.A. And LILA, J.A.)

CRIMINAL APPEAL NO. 120 OF 2016

FADHILI CHENGULA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the decision of the Magistrate's Court of Ruvuma (Ext.
Jurisdiction) (At Songea)**

(G.H. Herbert, SRM)

Dated 15th day of April, 2016

In

Criminal Session No. 3 of 2016

RULING OF THE COURT

7th & 10th May, 2018

LUANDA, J.A.:

The above named appellant, was charged with and convicted of the offence of murder and sentenced to suffer death by hanging. The trial was conducted by Mr. G.H. Herbert, Senior Resident Magistrate with extended jurisdiction. Dissatisfied with that finding, hence this appeal.

The appellant enjoyed the services of Mr. Rwezaula Kaijage, learned advocate; whereas Ms. Tulibake Juntwa and Mr. Emmanuel Barigila both learned State Attorneys represented the respondents/Republic.

Mr. Kaijage lodged a memorandum of appeal consisting of three grounds. However, Mr. Kaijage did not wish to pursue the appeal on those three grounds. He informed the Court that he wished to argue a complete new ground and so in terms of Rule 81(a) of the Court of Appeal Rules, 2009 (the Rules) he prayed that he be allowed to do so. In actual fact the new ground arose from the decision of the Court in **Majaliwa Guzuye v. Republic**, Criminal Appeal No. 213 of 2004 (unreported) supplied to him by the Republic where it was held that the case is not properly transferred from the High Court to be heard by a subordinate Court with Extended Jurisdiction at the stage after the High Court had already taken the plea of the accused person and conducted a preliminary hearing which is contrary to s. 256A of the Criminal Procedure Act, Cap 20 (the CPA). We allowed him to address us on that point.

He informed us that the appellant, as earlier said, was charged with murder which offence is normally tried in the High Court. However, at times, the offence could be transferred and tried by subordinate Court to the High Court by a Resident Magistrate with Extended Jurisdiction.

But the transfer in terms of s. 256A of the CPA must be done before the plea of the accused is taken and preliminary hearing is conducted. Now

since the trial by Mr. Herbert SRM – Extended Jurisdiction was conducted when already the High Court had taken plea and conducted a preliminary hearing, the proceedings were a nullity. He prayed that the Court to exercise its revisional powers under s. 4 (2) of the Appellate Jurisdiction Act, Cap. 141 RE 2002 (the AJA) by quashing the entire trial Court proceedings and set aside the sentence. He did not go further.

On the other hand Ms Juntwa supported the position taken by Mr. Kaijage in that the transfer was not properly done. She, however, added that the Court after nullifying the trial Court proceedings, it should order the case proceed to hearing by the High Court.

The starting point is s. 256A of the CPA. The section reads:-

*256A (1) The High Court may direct that the taking of **plea and the trial** on 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 sub section (1) of section
173.” ([Emphasis supplied].*

The section is very clear. It is a legal requirement that when the High Court decides to transfer the case of this nature so that it be tried by a resident magistrate with extended jurisdiction in terms of the above section, it must be made before the taking of a plea and the conduct of preliminary hearing. To do so after the taking of plea and conduct of preliminary hearing is to go against the law. [See **Juma Lyamwimwe v Republic**, Criminal Appeal No. 42 of 2001 (unreported)].

In this case Mr. Hubert SRM Ext. Jurisdiction was assigned the case when already the High Court had taken the plea and the preliminary hearing was conducted. That is against s.256A of the CPA. We entirely agree with the submission of both sides.

In the exercise of our revisional powers as provide under s. 4(2) of the AJA, we declare the entire proceedings of the trial subordinate court a nullity and set aside the sentence of death by hanging. We order Criminal Session case No. 6 of 2015 should proceed to hearing by the High Court

(Songea Registry) from the stage reached on 16/11/2015 after the preliminary hearing.

Order accordingly.

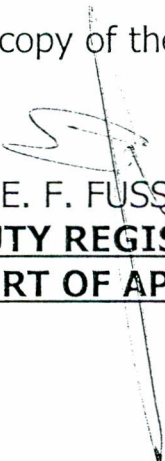
DATED at IRINGA this 8th day of May, 2018.

B. M. LUANDA
JUSTICE OF APPEAL

R. E. S. MZIRAY
JUSTICE OF APPEAL

S. A. LILA
JUSTICE OF APPEAL

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



E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL