

IN THE COURT OF APPEAL OF TANZANIA

AT BUKOBA

(CORAM: MBAROUK, J.A., MKUYE, J.A. And WAMBALI, J.A.)

CRIMINAL APPEAL NO. 372 OF 2016

HATWIB SALIM.....APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

**(Appeal from the decision of the High Court of Tanzania at
Bukoba)**

(Matogolo, J.)

dated the 22nd day of August, 2016

in

Criminal Case No. 220 of 2014

RULING OF THE COURT

20th & 24th August, 2018

MBAROUK, J.A.:

In the District Court of Muleba at Muleba, the appellant was charged with the offence of armed robbery contrary to section 287A of the Penal Code Cap. 16 R.E. 2002. The trial District Court convicted the appellant as charged and sentenced him to thirty (30) years imprisonment. Aggrieved

by that decision, the appellant unsuccessfully appealed to the High Court of Tanzania at Bukoba where his appeal was dismissed in its entirety. Undaunted, he has preferred this second appeal.

On 16-11-2016, the appellant preferred a memorandum of appeal containing six grounds of complaint and thereafter on 9/02/2018 filed a supplementary memorandum of appeal containing another six grounds making a total of twelve (12) grounds of complaint in this appeal. Among the twelve grounds of complaint, we found one pertinent issue which we thought it should be addressed to us first. This was concerning the issue of non-compliance with the requirement of the provisions of section 214 (1) of the Criminal Procedure Act, Cap. 20 R.E 2002 (the CPA) to which the appellant raised it as one of his ground of appeal. However, it was later learnt that, the stated ground was not raised earlier at the first appellate court, hence cannot be raised in this second

appellate court – **See Hassan Bundala @ Swaga vs Republic**, Criminal Appeal No. 386 of 2015 (unreported). That prompted us to take over that pertinent issue and raised it *suo motu* in the move to satisfy ourselves as to whether the appeal is competent before us.

When the appeal was called on for hearing, the appellant appeared in person unrepresented, whereas, the respondent / Republic was represented by Mr. Athumani Matuma, learned Senior State Attorney.

Being a lay person not conversant with legal matters, we opted to allow the learned Senior State Attorney to address us first on the issue which we have earlier on raised. That is, whether the second trial magistrate who took over from the first trial magistrate had jurisdiction to take over and conclude the trial without reasons given for that change of magistrates, taking into account the requirement stated in the provisions of section 214(1) of the CPA.

In response to that issue raised by the Court ***SUO motu***, Mr. Matuma conceded and submitted that as the successor magistrate had failed to give reasons as to why he has taken over the case from his predecessor, that act has contravened the requirement stated under section 214(1) of the CPA. He therefore urged us to invoke the powers of revision conferred upon us under section 4(2) of the Appellate Jurisdiction Act Cap. 141 R.E. 2002 (the AJA) and nullify the proceedings conducted by the successor magistrate as well as the entire judgment of the High Court, thereafter quash the conviction and set aside the sentence imposed on the appellant.

On his part, after we explained to the appellant as to the stand made by this Court in its various decisions on the effect of non-compliance with section 214(1) of the CPA, he readily conceded to the issue raised by the Court.

Apart from what have been stated above, we have found it pertinent to reproduce some of the important parts found in the record of appeal which will clearly show as to where the problem arose. Looking at page 7 of the record of appeal it shows how the first trial magistrate started to take the evidence of PW1 as follows:-

"DATE: 20/1/2015

CORUM: A. W. KABUKA – RM

PROSECUTOR: D/SGT JUMANNE

ACCUSED: PRESENT

COURT CLERK: RWEHABURA

PROSECUTOR: for HRG for one witness

ACCUSED: Am ready.

PROSECUTION CASE OPENS.

***PW1: Charles Andrew Bwantice
Adult, Resident of Nshamba, Haya,
Christian sworn and states:-"***

.....
.....
.....

PROSECUTOR: *I pray for another
Hearing date*

ACCUSED: *The prosecution brings
only one witness it seems they want
to delay the case.*

ORDER: *(1) 3-2-2015*

(2) P/W/ to appear

(3) AFRIC."

Thereafter on 3-2-2015, without any reasons given,
another magistrate took over from the first magistrate. The
record at page 8 speaks by itself as follows:

"DATE: *3-2-2015*

CORUM: *B. B. NKOMOLA – RM*

PROSECUTOR: *D/SGT MPELWA*

ACCUSED: *PRESENT*

COURT CLERK: *G. MASHAURI*

PP: *I have no witnesses. I pray
another date for hg.*

COURT: *Hg on 18-2-2015*

B. B. NKOMOLA RM

3-2-2015

DATE: 18-2-2015

CORUM: B. B. NKOMOLA – RM

PROSECUTOR: D/SGT MPELWA

ACCUSED: PRESENT

COURT CLERK: G. MASHAURI

PP: *I have no witnesses I pray
another date for hearing*

ACCUSED: *This is long time case.*

COURT: *Last Adjournment on 6-3-
2015*

B. B. NKOMOLA RM

18-2-2015

DATE: 6-3-2015

CORUM: B. B. NKOLOMA – RM

PROSECUTOR: D/SGT MPELWA

ACCUSED: PRESENT

COURT CLERK: G. MASHAURI

PP: *I have two witnesses*

COURT: *Let proceeded.*

PROSECUTION CASE PROCEEDS:

PW2 – *Mariam Nuha, Adult resident of Bugarama Village, Muleba, Islam Affirmed and state as follows:- "*

B. B. Nkomola – RM continued with the proceedings of the case until he finished and he later composed his judgment and sentenced the appellant.

To start with, let us begin by looking at what Section 214 (1) of the CPA states. The same reads as follows:-

" Where any magistrate, after having heard and recorded the whole or any part of the evidence in any trial or conducted in whole or part of any committal proceedings is for any reason unable to complete the trial or committal proceeding 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 necessary, resummon the witnesses and recommence the trial or the committal proceedings.”

A plethora of authorities given by this Court have emphasized the requirement of the successor magistrate to give reasons as to why he took over the proceedings of a case from his predecessor. For example, in the case of **Abdi Masoud @Iboma & 3 others vs. Republic**, Criminal

Appeal No. 116 of 2015 (unreported), this Court stated as follows:-

“In our view, under S. 214 (1) of the CPA it is necessary to record the reasons for reassignment or change of trial magistrate. 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.”

(Emphasis added)

In the case of **Salimu Hussein vs. Republic**, Criminal Appeal No. 3 of 2011 (unreported), this Court emphasized the requirement to comply with the provisions of section 214 (1) of the CPA and stated as follows:-

“We only wish to emphasize here that under this section, the second or

subsequent magistrate can assume the jurisdiction to "take over and continue the trial and act on the evidence recorded by his predecessor "only if the magistrate "is for any reason unable to complete the trial "at all or "within a reasonable time. Such reason or reasons must be explicitly shown in trial courts record of proceedings."

Also see: **Adam Kitundu vs Republic**, Criminal Appeal No. 360 of 2014, **Isaack Stephano Kilima vs. Republic**, Criminal Appeal No. 273 of 2011, **Mathias Kalonga and James Moshi vs. Republic**, Criminal Appeal No. 438 of 2015 (all unreported) to mention a few.

The requirement to state reasons of change of magistrates from one magistrate to another is a very important issue to be considered. This is for the reason of controlling and avoiding the danger of some mischievous

persons who might be able to access the file and do issues not in accordance with the procedure or requirements of the law.

As shown above, in the instant case the successor magistrate has failed to give reasons as to why he took over the case from his predecessor. That surely is in contravention with the requirement under section 214(1) of the CPA.

For that reason, in exercising our revisional powers conferred upon us under section 4(2) of the (AJA), we are constrained to nullify the proceedings conducted by the successor magistrate and the entire judgment of the High Court as the appellant might have been prejudiced. We also quash the conviction and set aside the sentence imposed on the appellant and order a retrial before another magistrate. Furthermore, for the interest of justice, we order that a new trial to be expedited and if the new trial will lead to the appellant's conviction, the time he has spend in prison serving

the sentence imposed on him prior to the new trial, should be taken into account when sentence is passed. It is so ordered.

DATED at **BUKOKA** this 23rd day of August, 2018.

M. S. MBAROUK
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

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


E. Y. MKWIZU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL

