

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DODOMA**

**(CORAM: MBAROUK, J.A., MKUYE, J.A., AND MWAMBEGELE, J.A.)**

**CRIMINAL APPEAL NO. 149 OF 2016**

**COSMAS CHILANGAZI @ EMMANUEL ..... APPELLANT**

**VERSUS**

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

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

**(Makuru, J.)**

**dated the 9<sup>th</sup> day of March, 2016**

**in**

**Criminal Appeal No. 46 of 2012**

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**JUDGMENT OF THE COURT**

2<sup>nd</sup> March & 6<sup>th</sup> March, 2018

**MBAROUK, J.A.:**

In the District Court of Kongwa at Kongwa, the appellant, Cosmas Chilangazi @ Emmanuel together with seven other accused persons (not subject to this appeal) were arraigned for armed robbery contrary to sections 285,

286 and 287A of the Penal Code Cap.16 R.E. 2002 as amended by Act No. 4 of 2004. He was convicted as charged and sentenced to thirty (30) years imprisonment with twelve (12) strokes. Dissatisfied, the appellant unsuccessfully appealed to the High Court. Undaunted he has preferred this second appeal.

At the trial court, the prosecution alleged that on 10<sup>th</sup> day of May, 2011 at about 20:30 hrs. at Kibaigwa village within Kongwa District in Dodoma Region did steal one motorcycle with Reg. No. T.947 BYT make YAMAHA valued at T.Shs. 1,500,000/= the property of Yared Chidobi by cutting him on the head by using bush knife in order to obtain and retain the property being the property of Yared Chidobi.

In this appeal, the appellant appeared in person, unrepresented, whereas the respondent/Republic was represented by Ms. Salome Magesa, learned State Attorney.

Before going to hear the appeal on merit, we were forced to satisfy ourselves as to whether the proceedings

before the trial court was properly conducted. This factor prompted us after we noted that the requirements of section 214(1) of the Criminal Procedure Act Cap. 20 R.E. 2002 (the CPA) has been contravened. This was for the reason that, the record of appeal shows that the case was heard by two magistrates, but no reasons were given by a successor magistrate after he took over the trial from his predecessor as to why he could not complete the hearing of the trial. It was for that reason, we halted to proceed with the hearing of the appeal on merit.

In her reaction to the issue which was raised by the Court *suo motu*, the learned State Attorney correctly submitted that what transpired in the conduct of proceedings before the trial court was a complete violation of the requirements of section 214 (1) of the CPA. She therefore urged us to nullify all the proceedings after the successor magistrate took over the conduct of proceedings without giving reasons from his predecessor magistrate as to why he could not complete the trial. She further urged us to remit

the case file back to the trial court for the case to proceed from the stage where the predecessor magistrate left but that should be done after compliance with the provisions of section 214 (1) of the CPA.

On his part, the appellant being a lay person had nothing useful to submit knowingly the issue raised by the Court was legal by nature. He therefore left the matter to be decided by the Court as it thinks fit.

As pointed out earlier, the issue raised by the Court is a point of law on the propriety of the proceedings in the trial court after we had found that no reasons were given by the successor magistrate after he took over the proceedings from the predecessor magistrate as to why he was unable to complete the hearing of the trial. The record of appeal shows at p. 8 that, E.E. Mwanjemi, DM started to hear the testimonies of prosecution witnesses from PW1 to PW4. Thereafter G.M. Pius, SDM took over and delivered a ruling that a prima facie case has been established against the appellant. He therefore, proceeded to hear the defence

evidence and ultimately composed a judgment without complying with the requirements of section 214(1) of the CPA.

To start with, we have found it proper to commence our discussion by examining what is provided under section 214(1) of the CPA, which provides as follows:-

*"(1) 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 the 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, resummons*

*the witnesses and recommence the trial or the committal proceedings.”*

It is our considered opinion that, the provisions of section 214(1) of the CPA requires that, reasons have to be shown by a successor magistrate as to why the predecessor magistrate could not complete the trial. In the absence of such reasons, the successor magistrate cannot legally proceed with the trial and if he proceed without giving reasons, that renders the proceedings conducted by him a nullity. In the case of **Abdi Masoud @ Iboma and Three Others Vs. Republic**, Criminal Appeal No. 116 of 2015 (unreported), this Court emphasized the compliance with the provisions of section 214(1) of the CPA and stated that:-

*"In our view, under section 214(1) of the CPA, it is necessary to record the reasons for reassignment or change of trial court magistrates. 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 to try the case.”*

As it has also been pointed out in the case of **Priscus Kimaro Vs. Republic**, Criminal Appeal No. 301 of 2013 (unreported) concerning the effect of not recording the reasons of reassignment of another magistrate, this Court stated 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 must lead to chaos in the administration of justice. Anyone, for personal reasons could pick up any file and deal with it to the detriment of justice. This must not be allowed.”*

Also see **Msami Ally Vs. Republic**, Criminal Appeal No. 280 of 2015 and **Ramadhani Mohamed and Ndalule Selemani Vs. Republic**, Criminal Appeal No. 59 of 2011(both unreported) to name a few.

As shown earlier, in the instant case, the successor magistrate failed to record the reasons for the reassignment of the trial from the predecessor magistrate which is in contravention with the requirements under section 214(1) of the CPA. It is now a trite law that non-compliance with the provisions of section 214(1) of the CPA renders the proceedings conducted by a successor magistrate and those of the High Court to be a nullity. We therefore, find those proceedings a nullity.

In the event, we invoke our revisional powers conferred on us under section 4(2) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 and quash all the proceedings conducted after the predecessor magistrate at the trial court and those conducted before the High Court together with its judgment. We further order to remit the record/file to the trial court for it to proceed with the trial from where the predecessor magistrate ended the proceedings of the case and this should be done after compliance with the requirements under section 214(1) of



the CPA by the successor magistrate. If the appellant is to be convicted, the time he has served in prison should be taken into account. Meanwhile, the appellant should be held as a remand prisoner until his trial resumes. We further order that, his trial should resume as soon as practicable and expeditiously conducted.

It is so ordered

DATED at DODOMA this 5<sup>th</sup> day of March, 2018.

M.S. MBAROUK  
**JUSTICE OF APPEAL**

R.K. MKUYE  
**JUSTICE OF APPEAL**

J.C.M. MWAMBEGELE  
**JUSTICE OF APPEAL**

I certify that this is true copy of the original.

  
E.F. FUSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**