

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

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

CRIMINAL REVISION NO. 7 OF 2017

**THE REPUBLICAPPLICANT
VERSUS**

**CHRISTIAN MHAPARESPONDENT
(Revision from the Order of the High Court of Tanzania
at Iringa)**

(Feleshi, J.)

**dated the 4th day of May, 2017
in
Criminal Session case No. 12 of 2014**

RULING OF THE COURT

5th & 6th June, 2018

LUANDA, J.A.:

Before CHRISTIAN MHAPA (hereinafter referred to as the respondent) was formally arraigned in the High Court of Tanzania for murder, he was provisionally charged in the District Court of Mufindi at Mafinga with that offence. The duty of such District Court in offences of this nature is to conduct committal proceedings and commit the accused person in terms of section 246 of the Criminal Procedure Act, Cap. 20 RE 2002 (the CPA) for trial in the

High Court. In terms of section 178 of the CPA, it is only the order of the Committal Court which formally and properly submits an accused person to the jurisdiction of the High Court.

In our case, the record shows that the District Court of Mufindi committed the respondent to the High Court for trial. The proceedings of that court reads as follows:

"Date: 7/4/3014

Coram: V.M. Nongwa – SRM

Pro: P. Ngoro A/Insp

Acc: Present

CC: S. Kabasa

Pros – Matter for committal proceedings.

Court: Accused person is before the court for committal proceedings.

As per section 246(2) of CPA the prosecutor is asked to read out the information brought against the accused person.

***V.M. Nongwa – SRM
28/4/2014 (sic)***

Accused person: *I have nothing to say your honour, section 246(3) of CPA C/W.*

LIST OF PROSECUTION WITNESSES.

1. *Said s/o Vehekage of Ihefu Village*
2. *Chesco s/o Muhagita of Ihefu Village VEO Ihefu*
3. *Expedita d/o Mhapa of Ihefu Village*
4. *Anisa d/o Kabange of Ihefu village*
5. *Janeth d/o Mdalingwa of Ihefu village*
6. *Raphael s/o Nyagawa Police office Mafinga*
7. *Hyasinta Luambano J/P of Mafinga*
8. *Kadi s/o Kamonga medical Dr. Mafinga Hospital*
9. *E. 5541 D/Cpl. Athuman of Mafinga Police Station*
10. *Vitalis s/o Mdalingwa of Ihefu village*
11. *Gwido s/o Abert Mvinge of Ihefu village*

Prosecution exhibits.

1. *Report on post mortem Examination*
2. *Cautioned statement*

3. *Extra judicial statement*
4. *Panga (bash (sic) machete)*
5. *Skatch map(sic) of the scene of crime*

Accused: I have no witnesses no exhibits.

V.M. Nongwa - SRM
28/4/2014 (sic)

Court: Accused person has the right to have copies of those proceedings has been explained

V.M. Nongwa - SRM
28/4/2014 (sic)

Order:

The accused person Christian Mhapa is hereby committed for trial before the High Court of on a date to be communicated to him mean while the accused shall remain in custody.

V.M. Nongwa – SRM
28/4/2014 (sic)”

On 24/2/2016 the High Court of Tanzania at Iringa (Shangali, J.) conducted a preliminary hearing. On completion, the case was adjourned for hearing in the coming session or to be fixed by the Deputy Registrar of the High Court, Iringa.

On 4/5/2017 the case came for hearing before Feleshi, J. We reproduce what had transpired on that date:-

"Date: 4/05/2017

Coram: Hon. E.M. Feleshi, Judge

For the Republic: Ms. Blandina Manyanda State

Attorney, Assisted by Mr. Felix Chakila,
State Attorney, for the Republic.

For the Accused: Mr. Jackson Chaula Advocate

Accused person: Present under custody

Interpreter: Ms. Immaculata Makene – English into
swahili and vice Versa

Ms. Manyanda, State Attorney:

*This case is scheduled for hearing. However, our review to the record has revealed that the committal proceedings was not properly **conducted in terms of Section 246(2) of the Criminal Procedure Act, Cap 20 RE 2002.** It is our humble submission that the preliminary hearing proceedings conducted by this Court on 24/2/2016 based on a defective committal order. We thus pray that the Court be pleased to refer this matter to the Court of Appeal and also*

grant an adjournment. We further pray our witnesses in attendance Raphael Nyagawa and E. 5541 D/Cpl. Athuman be discharged. That is all.

Sgd: E. M. Feleshi
Judge
4/5/2017

Mr. Chaula, Advocate: *Since the prayer by the prosecution is geared to promote fair trial principles we have no objection.*

Sgd: E.M. Feleshi
Judge
4/5/2017

Order:

- (1) *In view of the fact that the prayer presented by the prosecution questions the competence of the committal proceedings dated 8/4/2014 of which the accused was committed for trial by this Court and this Court's preliminary hearing proceedings are inevitably equally challenged, for interest of justice the prayer is granted and the record of both the committing Court and the High Court should be referred to the Court of Appeal of Tanzania for it to examine the*

correctness, legality or the propriety of the aforesaid record under Section 4(3) of the Appellate Jurisdiction Act, Cap 141 RE 2002.

(2) Witnesses Raphael Nyagawa and E. 5541 D/Cpl. Athuman are hereby discharged.

(3) Invited assessors are thanked and discharged

(4) Accused to remain in custody.

Order accordingly.

***E.M. Feleshi
Judge
4/5/2017."***

On the basis of the foregoing, these revisional proceedings were opened.

Mr. Adolf Maganda, learned Senior State Attorney assisted by Ms. Blandina Manyanda and Ms. Margareth Mahundi, learned State Attorneys represented the applicant; whereas Mr. Rwezaura Kaijage, learned counsel appeared for the respondent.

From the outset the Court wanted to know as to what was amiss in the record which necessitated opening of these revisional proceedings. We said so because we were unable to see or spot out any omission in the committal

proceedings. And indeed if there is such an omission why they came to this Court instead of referring to the High Court. It would appear, the reason for coming to this Court is that the High Court (Shangali, J.) had dealt with the case by conducting a preliminary hearing. So, Feleshi, J. could not deal with the committal proceedings of committal court alone without effecting the preliminary hearing conducted by Shangali, J. That notwithstanding our concern is what is amiss in the committal proceedings of the committal District Court. Ms. Manyanda tried to impress upon us that section 246 (2) of the CPA was not complied with in that the statements of witnesses were not read to the accused person.

After a short dialogue, however, Ms. Manyanda agreed with us that the statements were read over to the respondent though it does not come out clearly.

On the other hand Mr. Kaijage supported the observation made by the Court. He, however, went further and said that even if the statements were not read over to the respondent, the omission is not fatal.

On our part as we are satisfied that the same were read over, we do not wish to go that far. Since the statements were read over to the respondent, the request to revise the proceedings is devoid of merits.

That said, we find no need of revising the proceedings. We remit the record to the High Court to proceed with the hearing of the case.

Order accordingly.

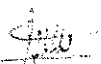
DATED at **IRINGA** this 6th day of June, 2018.

B.M. LUANDA
JUSTICE OF APPEAL

S.A. LILA
JUSTICE OF APPEAL

R.K. MKUYE
JUSTICE OF APPEAL

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


P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL