IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

(CORAM: LILA, J.A., KWARIKO, J.A. And MWANDAMBO, J.A.)

CRIMINAL APPEAL NO. 5 OF 2016

1. SAMWEL GITAU SAITOTI @ SAIMOO
2. MICHAEL KIMANI PETER @ MIKE @ KIM ..... **APPELLANTS**

VERSUS

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

(Appeal from the decision of the High Court of Tanzania, at Moshi)

(Mwingwa, J.)

Dated the 28th day of December, 2015
in
DC. Criminal Appeal No. 34 of 2013

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JUDGMENT OF THE COURT

14th & 30th August, 2019

MWANDAMBO, J. A.:

Samwel Gitau Saitoti @ Saimoo and Michael Kimani Peter @ Mike @ Kim, the appellants herein are among eleven accused persons arraigned before the District Court of Moshi on three counts of conspiracy and armed robbery contrary to section 384 and 287A, respectively of the Penal Code, Cap. 16 [R.E. 2002]. Out of the eleven accused persons, the trial court convicted the appellants herein who were the first and second accused respectively together with one Elizabeth Elias Msanze the tenth accused.

The duo were convicted as charged on all three counts and sentenced to a mandatory sentences of seven years on the first count and thirty (30) years imprisonment on the 2nd and 3rd counts each running concurrently. Four of the accused persons were acquitted at the end of the prosecution's case upon the trial court ruling that they had no case to answer in pursuance of section 230 of the Criminal Procedure Act, Cap. 20 [R.E. 2002] henceforth to be referred to as the CPA. The remaining five accused persons were found to be innocent after a full trial and were accordingly acquitted in a majority judgment of the trial court delivered on 13th June, 2013. The appellants' joint appeal to the High Court at Moshi was substantially unsuccessful except in relation to the first count on conspiracy which the first appellate court found untenable following conviction on the actual offence involving armed robbery. In their quest to vindicate themselves, the appellants preferred the instant appeal to this Court on eleven grounds of appeal. Before dwelling on the grounds of appeal, we find it compelling to highlight the relevant facts from which this appeal has arisen.

The tale of what brought the appellant's arraignment before the trial court has a direct connection to a somewhat dramatic event involving

armed robbery of a bank namely; NMB Bank Mwanga Branch in Kilimanjaro Region said to have occurred late in the evening on 11th July, 2007. The invasion of the said bank by the bandits resulted into the murder of one of the police constables guarding the said bank on the material night and theft of a substantial amount of money. The actual amount is a matter of dispute in the instant appeal. However, we shall, for the time being, go with the amount reflected in the judgment of the trial court as the amount involved that is to say; TZS 234,000,000.00 the property of the said bank and one gun, SMG 14302870 the property of the Tanzania Police Force. Following the said incident, the Police in Kilimanjaro Region reinforced by some police detectives from the Anti-Robbery Squad Unit from the Police Headquarters mounted a search in pursuit of the culprits. The pursuit and investigation of the culprits resulted into arrests of a number of suspects. Eventually, eleven of the suspects were arraigned before the trial court in connection with the said incident.

Initially, the accused persons were made to plead to a charge involving three counts of conspiracy contrary to section 384 of the Penal Code and armed robbery contrary to section 287A of the Penal Code to which they all pleaded not guilty. A year later, that charge was substituted

with another charge with the same counts adding some particulars in each of the counts particularly the amount of money alleged to have been robbed, the nature of the weapons used in the armed robbery and the kind of people allegedly threatened to steal the said properties. Yet again, the accused pleaded not guilty to the substituted charge.

That did not mark the end of the road, for according to the record, on 24th October, 2008, the accused persons were made to plead to a second substituted charge sheet on each of the three counts. Unlike the two previous charge sheets, the second substituted charge sheet is conspicuously missing from the record and this has been one of the complaints by the appellants in this appeal. Be it as it may, the record shows that on 19th November, 2008 when the trial court was about to conduct a preliminary hearing in terms of section 192 of the CPA, the accused persons were again asked to plead to the second substituted charge. After taking pleas from the accused, the trial court conducted a preliminary hearing in which almost all of the facts stood disputed except for the personal particulars of the accused persons and their arrests and arraignment in court in connection with the offences to which they all had pleaded not guilty. Having conducted the preliminary hearing, the trial

commenced on 15th December, 2008 before three Magistrates pursuant to a direction of the High Court following an order in Misc. Criminal Application Case No. 8 of 2008 transferring the trial from Dudu, RM to a panel of three Magistrates (Kente, PRM (as he then was) A. Temu, RM and J. Nkwabi, RM).

It is noteworthy and perhaps not unusual for cases like this that the conduct of the trial was characterized by a bumpy road. After the prosecution's case including nineteen (19) witnesses and 22 exhibits both documentary and physical, on 30th July, 2010, the prosecution prayed to close its case and the trial court marked it as such. That order was followed by written submission before the trial court making a determination whether the accused had a case to answer or not in accordance with section 230 of the CPA. Upon compliance with the schedule for filing the written submissions in line with its order made on 30th July, 2010, the trial court fixed the case for a ruling on whether the accused had a case to answer on 22nd November, 2010. For unexplained reasons, the record is silent on what transpired on 22nd November, 2010, for the record is not clear as to what transpired on that date. Instead, on 6th December, 2010, the case was placed for mention on which date the

prosecution prayed for a hearing date in respect of the defence case to which there was no objection. The record is conspicuously silent whether the much awaited ruling was indeed delivered. All the same, the matter was adjourned to 20th December, 2010 for mention.

After protracted adjournments, on 11th April, 2011, the defence counsel appeared and addressed the trial court in relation to the manner in which their clients were to present their defence through sworn evidence by themselves and other witnesses for some of the accused persons. Upon such address, the defence case commenced on 12th April, 2011 and terminated on 18th January, 2013. Following the closure of the defence case and the trial as a whole, the trial court delivered its judgment on 13th June, 2013. The majority judgment by Kente, PRM and Temu, SRM found the appellants herein and one Elizabeth Elias Msanze @ Bella (10th accused) guilty on all counts and convicted each of them as charged. Upon such conviction, the trial court passed the deserving sentences against the appellants and the 10th accused person. In his dissenting judgment, Nkwabi, RM found all remaining accused persons guilty except the eleventh accused.

In brief, the trial court entered a verdict of guilt on the three accused persons mainly on the doctrine of recent possession and extra judicial statement said to have been made by the 1st appellant to PW14. The said court found insufficient evidence to convict the 3rd, 8th, 9th and 11th accused persons and it acquitted them accordingly whilst the minority judgment found the 3rd, 8th, 9th and 10th accused persons guilty as charged. The above factual background will be sufficient for the purpose of our judgment in the light of the approach we have taken in determining this appeal.

As seen earlier, the appellants' first appeal to the High Court was barren of fruits, for the said court dismissed their appeal concurring with the findings of the trial court except on the first count involving conspiracy to commit an offence. Although from the face of its judgment there was no specific complaint against the conviction on the first count, the first appellate court sustained that complaint which appears to have been embodied in the first ground of appeal.

The appellants' appeal to this court lodged on 13th April, 2017 was predicated on 11 grounds. Subsequently, the appellants lodged a supplementary memorandum containing one ground and which they argued as the first ground in their written submissions after abandoning

ground one in the original memorandum of appeal. However, as it shall become apparent later, this appeal turns on the ground reflected in the supplementary memorandum of appeal in which the appellants raise the following complaint:

> *"That the District Registry of the High Court of Tanzania at Moshi erred in law when it furnished the appellants with incomplete court records, hence obviously prejudicing them in prosecuting their appeal."*

The appellants who are unrepresented, filed their written submissions together with a list of formidable authorities for which we are grateful to them as they have been quite useful to us in the determination of the sole ground as seen earlier. At the hearing, the appellants appeared in person and stood to highlight on some aspects of their written submissions after the respondent's oral submissions in reply through the able representation by Ms. Tarsila Gervas, learned State Attorney.

The appellants' submissions on this ground was anchored on a decision of the Supreme Court of Uganda in **Omiat vs. Uganda** [2003] EA 226 stressing on the need to avail to the appellant a complete record of proceedings under which his conviction is founded to enable the Court

satisfy itself that the trial court was correct in arriving at the impugned decision. Based on the above decision, the appellants complained that the High Court supplied them with an incomplete record omitting several documents necessary for their appeal. The said documents include; the second substituted charge sheet of 24th October, 2008, a ruling on the submission of no case to answer, first appellant's medical chits admitted in evidence as exhibit D1 and the appellants' petition of appeal to that court. According to the appellants, failure to supply them with such vital documents was prejudicial to them as it denied them the right to a fair hearing engraved under Article 13(1) (6) (a) of the Constitution of the United Republic of Tanzania, 1977. In amplification, the appellants contended that despite the lower courts' attempts to reproduce the contents of the charge sheet in their respective judgments, each had its own version of the contents particularly in relation to the 2nd and 3rd counts. The appellants argued further that the variance in the contents of the charge sheet put them in a dilemma, for whereas the amount of money reflected in the first appellate court's judgment the subject of the second count tallies with the evidence of PW9, the amount appearing in the trial court's judgment differs with the evidence of the same witness.

In relation to the ruling on the existence of a prima facie case, it was the appellants' contention that its absence in the record supplied to them had a bearing on their appeal particularly so because the trial court relied on evidence which had been disregarded in the ruling as if no such ruling had been composed and delivered.

Submitting orally in reply, Ms. Gervas was quick to concede that the second substituted charge sheet and the ruling establishing a prima facie case were indeed conspicuously missing from the record. However, the learned State Attorney contended that contrary to the appellants' complaint, the absence of the substituted charge sheet was inconsequential to the instant appeal because it was not one of the documents required under rule 71(4) of the Tanzania Court of Appeal Rules, 2009. According to the learned State Attorney, the said charge sheet was only relevant before the first appellate court which heard and determined the appellants' first appeal from the trial court.

To bolster her submission, the learned State Attorney sought reliance from the decision of this Court in the **Director of Public Prosecutions vs. Jackson Sifaeli And Others**, Criminal Appeal No. 2 of 2018 (unreported) for the proposition that the absence of a charge sheet is

inconsequential to the determination of a second appeal as this one. Furthermore, the learned State Attorney argued that the absence of the charge sheet has not prejudiced the appellants in any manner because the facts read during the preliminary hearing are sufficient to inform them of the charge they pleaded to before the trial court. In addition, the learned State Attorney argued that the evidence by PW1, PW2, PW9, PW16 and PW18 revealed sufficient facts in connection with the offence the appellants were charged with before the trial court. At any rate, Ms. Gervas contended, the complaint in relation to the absence of the charge sheet did not feature before the first appellate court and the same cannot be raised in this Court. All in all, the learned State Attorney urged the court to find no merit in this ground and dismiss it.

In response to the questions from the bench, the learned State Attorney appeared to concede that the facts read during the preliminary hearing do not show to whom the threat, an essential ingredient in the offence of armed robbery was directed in the absence of the substituted charge sheet. Regarding the missing ruling after the closure of the prosecution's case, Ms. Gervas admitted that the same was an important document to have been incorporated in the record which could have

enabled the appellants to know the nature of the case they were to answer as well as the prosecution knowing the reasons behind the acquittal of some of the accused persons after the closure of the prosecution's case.

For his part, the first appellant argued as follows in rejoinder. **Firstly**, contrary to the State Attorney's submission, rule 71(4) of the Rules requires a complete record including the charge sheet as one of the core documents in the record of appeal. **Secondly**, the proceedings are incomplete which deprived them the right to question each and every aspect in the lower courts' judgments. **Thirdly**, the absence of the ruling on the existence of the prima facie case after the closure of the case for the prosecution was so prejudicial to them. This is so, the first appellant argued, whereas they were told that they had a case to answer in relation to the first and second counts only, the trial court convicted them on all counts. As to the way forward, the first appellant urged the Court to acquit them rather than ordering a retrial as suggested by the State Attorney having regard to length of time they spent in custody. Alternatively, the first appellant prayed for an order for a fresh trial. The second appellant for his part subscribed to the submissions made by the first appellant.

We have dispassionately examined the submissions for and against the supplementary ground of appeal and the authorities placed before us. At the outset we wish to state that we subscribe in full to the position taken by the Supreme Court of Uganda in **Omiat v. Uganda** (supra). That Court addressed itself on the missing ruling in the record on a trial within a trial. It said:

> *"An appellant is entitled to have at his or her disposal, the entire record of proceedings under which his or her conviction is founded. Only on this basis is the Appellant availed all the opportunities to challenge every step and aspect leading to his or her conviction and sentence. Moreover, appellate court would be unable to satisfy themselves that the trial court was correct in reaching its decision about the trial within a trial."* (at page 229).

Back home, the right to access to documents during and after the trial was discussed by this Court in **Alex John vs. Republic**, Criminal Appeal No. 129 of 2006 (unreported). This is what the Court stressed:

> *"...an accused and/or his counsel must be granted access to appropriate information, files and documents necessary for the preparation of the*

defence ...Such access in our considered opinion, should be .....granted before the trial, during the trial and after the trial, in case of a conviction for appeal purposes ..." (at page 26).

As seen above, the complaint in the ground of appeal under our consideration is that the High Court which heard the appellants' first appeal did not supply the appellants with a complete record of proceedings containing copies of the second substituted charge sheet and a ruling on the existence of a prima facie case, amongst others. The appellants have contended that that deprived them their right to question each and every aspect in the lower courts' judgments in this appeal. The learned State Attorney would have us hold that the charge sheet is not a vital document in a second appeal as this one in terms of rule 71 (4) of the Rules more so when the complaint did not feature before the first appellate Court. We are prepared to go along with her only to the extent that the complaint did not feature before the first appellate court and so it is hard to say with any degree of certitude how would the said court have decided had the issue been raised before it. With respect, the learned State Attorney's reliance on rule 71 (4) of the Rules as a basis for her argument that a charge sheet is not one of the key documents to be included in a record of appeal on a

second appeal, is, with respect legally untenable. Rule 71 (4) of the Rules appears to be very explicit on the documents required. For ease of reference, we take the liberty to reproduce the same as under:-

> *(4) For the purposes of appeal from the High Court in its appellate jurisdiction, the record of appeal shall contain documents relating to the proceedings in the trial corresponding as nearly as may be to those set out in sub-rule (2) and shall contain also copies of the following documents relating to the appeal to the first appellate court -*
>
> *(a) the petition of appeal;*
> *(b) the record of proceedings;*
> *(c) the judgment;*
> *(d) the order, if any,*
>
> *and in the case of a third appeal, shall contain also the corresponding documents in relation to the second appeal and the certificate of the High Court that a point of law is involved."*

Ms. Gervas appears to have read too much from our previous decision in **Director of Public Prosecutions vs. Jackson Sifaeli And Others** (supra) on the interpretation of the above quoted Rule. What we said in that decision is that not every missing document will require reconstruction of a record of appeal unless such a document is necessary

or primary for the determination of the appeal. It will be clear that documents relating to the proceedings in the trial court must be construed to include a charge sheet which is the very foundation of any criminal proceedings before a trial court. In our view, a substituted charge is such a vital document in the proceedings before the trial court which must be included in a record of appeal in a second appeal as this one. That aside, the necessity of the substituted charge becomes necessary when the same is weighed in the light of the judgment of the first appellate court. Our perusal of the said judgment shows that the first appellate court at pages 14 and 15 dealt with arguments on the defectiveness of the charge sheet on the second and third counts but found the same to be proper.

As rightly submitted by the appellants relying on **Omiat v. Uganda** (supra) presence of a charge and any substituted charge sheet is consistent with the appellants' right to question each and every aspect of the judgment of the trial court as well as the first appellate court thereby satisfying the second appellate court that the appellants were convicted on the basis of a proper charge. One of the appellants' complaint in this appeal is that the trial court's judgment makes reference to a different charge sheet from the first appellate court. We are inclined to agree that

the complaint is justified but even if it was not, the determination of it this way or the other can only be made by examining the charge sheet resulting into the appellants' conviction. Without the substituted charge sheet in the record of appeal, the Court cannot be in a position to determine whether or not the appellants were convicted on the basis of a proper charge.

A similar issue arose in **Paulo Apolo vs Republic**, Criminal Appeal No. 260 of 2015 (unreported). That decision arose from a second appeal in a case in which there was a substitution of a charge sheet. Initially, the appellant was charged with robbery with violence contrary to sections 285 and 286 of the Penal Code. Subsequently, that charge was substituted and the appellant pleaded thereto. The substituted charge went missing from the record of appeal but according to the trial court's judgment, the appellants stood charged with "Robbery c/s 287 of the Penal Code as amended by Act No. 4 of 2004". At the end of the trial, the trial court found the appellant guilty of the offence appearing in the substituted charge. Although the word armed did not feature in the judgment, it found its way in the sentence. On appeal, the High Court, upheld the trial court's

judgment upon being satisfied that the prosecution's evidence had proved the ingredients for the offence of robbery.

One of the grounds before this Court on a second appeal was pegged on the absence of the substituted charge sheet and the effect of it to which the republic readily conceded that had an adverse bearing on the appellant's conviction. After discussing the purpose of a record of appeal and the importance of a charge in it, the Court had the following to say:-

> *"In the present appeal, the appellants have complained that the learned judge on a first appeal wrongly convicted them on a charge which was already substituted. We think the complaint is justified. As intimated above, although the charge was substituted and the trial court convicted the appellant of Armed Robbery, in the absence of the substituted charge we are unable to say whether the charge was proper. We also believe that it was the absence of the "substituted charge" which led the first appellate court to dismiss the appeal against conviction for the offence of robbery with violence which had already been substituted. The net effect is that the High Court confirmed a conviction which was not there. ... In the totality of the circumstances and in particular, the absence of*

the copy of the charge sheet which was allegedly substituted, this Court has been disabled from performing its primary duty, that of examining if there were any errors is the charges which were prejudicial to any of the parties.... we can only say with certainty that we are not sure whether the appellant received a fair trial. So his conviction is not safe..."(Emphasis added, at page 6 and 7).

The crux of the appellants' complaint in this appeal is that the amount of the money allegedly stolen the subject of the second count is TZS 239,490,000.00 whereas the first appellate court's judgment shows that the amount stolen was TZS 239,000,000.00 which tallies with PW9's testimony. In other words, the appellants are saying that the two courts below are not talking to each other in relation to the charge sheet forming the basis of their conviction. With respect we are constrained to agree with the appellants in that contention. The two courts below made reference to different charge sheets and this would appear to lend credence to a conclusion that the first appellate court might have upheld a conviction against the appellants on a charge sheet which was not there and so the dismissal of the appellants' appeal could not have been proper. As was the case in **Paulo Apolo's** case, we are more than certain in this appeal that

the absence of a copy of the charge sheet on the basis of which the appellants were called upon to plead and stood trial leading to their conviction upheld by the first appellate court has a bearing to the appeal. This is so because the absence has deprived us the opportunity to perform our primary duty of scrutinizing the said charge sheet to satisfy ourselves whether there were any errors in the said charge sheet. Consistent with our decision in **Paulo Apolo** (supra) we have no hesitation in holding as we do that it is highly unlikely that the appellants received a fair trial to be able to conclude that their conviction was safe.

As to what should be done in the circumstances, there is only one option that is to say; to allow this ground of appeal.

Our determination of the first ground would have been sufficient to dispose of the appeal. However, we find it necessary to consider yet another disturbing aspect which has a bearing on the proceedings before the trial court. That aspect is closely connected to the appellants' complaint in relation to the absence of the ruling on the existence of a case to answer against the appellants.

It is evident from the judgment of the trial court, the appellants and the third, fifth, eighth, ninth, tenth and eleventh accused persons were

found to have a case to answer and called upon to defend. The fourth, sixth, seventh and twelfth accused persons were acquitted upon the trial court being satisfied that the prosecution had not made out a prima facie case against them in pursuance of section 230 of the CPA. As seen above, it is not clear from the record of proceedings before the trial court that the ruling was delivered on the date scheduled or any other date. All the same, the defence commenced on 12th April, 2011 terminating on 18th January 2011. However, there is no indication that the trial court paid regard to the provisions of section 231(1) of the CPA. The said section stipulates:

> *"At the close of the evidence in support of the charge, if it appears to the court that a case is made against the accused person sufficiently to require him to make a defence either in relation to the offence with which he is charge or in relation to any other offence of which, under the provisions of sections 300 to 309 of this Act, he is liable to be convicted the court shall again explain the substance of the charge to the accused and inform him of his right–*
>
> *(a) to give evidence whether or not on oath or affirmation, on his own behalf; and*
>
> *(b) to call witness in his defence,*

and shall then ask the accused person or his advocate if it is intended to exercise any of the above rights and shall record the answer; and the court shall then call on the accused person to enter on his defence save where the accused person does not wish to exercise any of those rights."

Before winding up her submissions, the Court enquired from the learned State Attorney whether section 231 (1) of the CPA was complied with and the effect of the absence of the ruling on a prima facie case against the appellants and their co-accused.

Ms. Gervas conceded that the provisions of section 231(1) of the CPA were indeed not adhered to. She likewise conceded that the absence of the ruling on the existence of a prima facie case had adverse bearing against the appellants as well as the respondent. That being the case, the learned State Attorney invited us to nullify all the proceedings after the date on which the trial court was to deliver its ruling on whether the appellants and the co-accused persons had a case to answer together with the judgment, conviction and sentences as well as the proceedings and judgment of the first appellate Court. After doing so, Ms. Gervas urged us to order a fresh trial from the stage the trial court marked the prosecution case closed.

Not surprisingly, the appellants for their part were in agreement with the learned State Attorney's concession. In particular, the appellants lamented that the absence of the ruling was prejudicial to them in that whereas they were told that they had a case to answer on the first and second counts, the trial court convicted them on all counts. In the circumstances, they prayed for an order acquitting them. Alternatively, they pressed us for a hearing afresh from the stage the trial court marked the closure of the prosecution case.

There is no gainsaying that the trial court overlooked its attention to the provisions of section 231 (1) of the CPA. The problem was, in our view, compounded by the absence of the ruling finding the appellants and some of their co-accused with a case to answer. The effect of non-compliance with section 231 (1) of the CPA was succinctly discussed in our previous decision in **Alex John vs. R** (supra). We discussed at length in that case the safeguards ensuring the right to a fair trial guaranteed by Article 13 (6) (a) of the Constitution which includes strict compliance with sections 230 and 231 (1) of the CPA amongst others.

After revisiting several foreign decisions discussing the right to equality of hearing, the Court referred to its decision in **Julius Francis**

Ishengoma Ndyanabo vs. Attorney General [2001] 2 EA 485 stressing on the broad interpretation of the provisions dealing with fundamental rights with a view to ensuring that people enjoy their rights. The Court referred to the erstwhile European Commission of Human Rights on the equal right to facilities by an accused person to include access to appropriate information, files and documents necessary for the preparation of defence subject to unavoidable and reasonable security restrictions. The Court then continued:-

> *"such access in our considered opinion should be readily granted before the trial, during the trial and after the trial in case of a conviction for appeal purposes ..."*(at page 26).

The appellants have consistently complained that they were denied right of access to several documents including copies of the ruling on the prima facie case for appeal purposes and the learned State Attorney was in agreement that it was prejudicial to the appellants. With respect, we agree and hold that that was indeed fatal to their appeal to the first appellate court as well as this Court. As to non-compliance with section 231 (1) of the CPA, we need only repeat what we said in **Alex John vs. R.** case (supra) that compliance with sections 230 and 231 is mandatory. This

Court found merit in the complaint regarding non-compliance with section 231(1) and quashed the appellant's trial for being a nullity. At the end of the day, the Court found no reason to order a retrial due to lack of cogency evidence to sustain conviction and released him.

We will not take a similar approach in this case, for we think despite the noted irregularities, having regard to the seriousness of the offences, the prosecution must be given an opportunity to pursue its case against the appellants upon compliance with the law. Ordinarily, we would have nullified all the proceedings after the closure of the prosecutions' case and ordered afresh trial from that stage. However, in view of our holding in relation to the first ground of appeal, we shall not take that route. Instead, we shall order as we hereby do fresh trial on a proper charge.

In the event, having allowed the first ground of appeal, consistent with our decision in **Paulo Apolo's** case (supra), we are constrained to exercise our power under section 4(3) of the Appellate Jurisdiction Act, Cap. 141 [R.E. 2002] by nullifying all the proceedings and judgment of the High Court on first appeal together with the judgment and proceedings before the trial court from immediately before the appellants' plea to the missing substituted charge dated 24th October 2008. Having so

ordered, we hereby quash the conviction and set aside sentences meted out to the appellants. That said, the position before the trial court remains as it was on 25th September 2008. The record shall be remitted to the trial court to proceed with trial from 25th September 2008 before a fresh panel of Magistrates with competent jurisdiction.

In the meantime, the appellants shall remain in custody awaiting continuation of trial.

DATED at **ARUSHA** this 29th day of August, 2019.

S. A. LILA
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

The judgment delivered this 30th day of August, 2019 in the presence of the Appellants in person and Mr. Abdallah Chavura learned Senior State Attorney appeared for the respondent, Is hereby certified as a true copy of the original.

A. H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL