

IN THE COURT OF APPEAL OF TANZANIA

AT BUKOBA

(CORAM: MMILLA, J.A., MZIRAY, J.A., And KWARIKO, J.A.)

CRIMINAL APPEAL NO. 442 OF 2018

JACKSON PROTAZ APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

**(Appeal from the decision of the Resident Magistrate's Court of Kagera
(Ext. Jurisdiction) held at Karagwe)**

(Kahyoza, PRM – Ext. Jurisdiction)

dated the 12nd day of November, 2018

in

Criminal Sessions Case No. 53 of 2017

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RULING OF THE COURT

3rd December, 2019

KWARIKO, J.A.:

When the appeal was called on for hearing, Mr. Josephat S. Rweyemamu, learned advocate, appeared for the appellant while Ms. Suzan Masule, learned State Attorney, represented the respondent/Republic.

Before the hearing commenced in earnest, we wanted to satisfy ourselves whether the order of the High Court dated 11/9/2016 was

complied with. Earlier, on that date the defence counsel had informed the Court that, the defence was intending, at the trial, to raise the defence of insanity. As such it implored the Court to make an order for the appellant to be sent to a mental hospital for examination of his mental status at the time he was alleged to have committed the offence of murder. The prosecution did not object the prayer.

The High Court granted the prayer and in terms of section 220(1) of the Criminal Procedure Act [CAP 20 R.E 2002], it ordered the appellant to be sent to a mental hospital for examination of his mental status at the time he was alleged to have committed the offence. The counsel for the parties agreed that the High Court order was not complied with and this matter was not raised during the appellant's trial.

However, upon perusal of the Court record, we found the medical officer's report from Isanga Institution dated 5/1/2018 and received by the High Court on 19/2/2018. This report was nevertheless not considered by the High Court in accordance with the law.

It is our considered view that, following that omission, there was no fair trial. Thus, invoking our revisional powers under section 4(2) of the

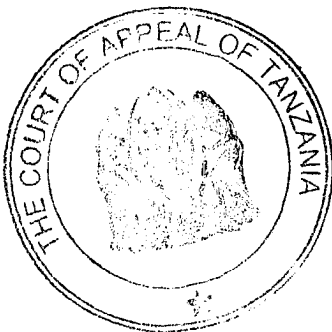
Appellate Jurisdiction Act [CAP 141 R.E. 2002], we hereby quash the proceedings, judgment and conviction by the trial Court and set aside the sentence against the appellant. We order a trial of the appellant *denovo* before a different judge where the medical report will be considered.

We further direct the High Court to hold trial expeditely in this regard because the appellant had been in remand prison since January, 2015 and a prisoner from November, 2018.

Meanwhile, the appellant shall remain in custody waiting his retrial.

It is so ordered.

DATED at **BUKOB**A this 3rd day of December, 2019.




B. M. MMILLA
JUSTICE OF APPEAL

R. E. MZIRAY
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

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


B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL