

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

**(CORAM: MWARIJA, J.A., KEREFU, J.A. And KENTE, J.A.)**

**CRIMINAL APPEAL NO. 295 OF 2019**

**EMMANUEL DAUDI ..... APPELLANT**

**VERSUS**

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

**(Appeal from the Judgment of the Resident Magistrate's Court of  
Shinyanga at Shinyanga)**

**(Hon. Mwaiseje, SRM – Ext. Jur.)**

**Dated the 22<sup>nd</sup> day of May, 2019  
in  
Criminal Appeal No. 47 of 2019  
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**JUDGMENT OF THE COURT**

*2<sup>nd</sup> & 10<sup>th</sup> November, 2022*

**MWARIJA, J.A.:**

The appellant, Emmanuel Daudi was charged in the District Court of Shinyanga with the offence of attempted robbery contrary to s. 287 B of the Penal Code. It was alleged that on 9/6/2015 at 21:45 hrs at Ngokolo area within the Municipality of Shinyanga in Shinyanga Region, the appellant attempted to steal a mobile phone, make Itel valued at TZS.30,000.00, the property of Zubeda Yusuph and immediately before or after such an attempt, threatened to cut the said Zubeda Yusuph with a machete in order to obtain the said property.

The appellant denied the charge and as a result, the case had to proceed to a full trial. At the trial, the prosecution relied on the evidence of three witnesses while on his part, the appellant was the only witness for the defence.

The evidence for prosecution was tendered by Zubeda Yusuph (PW1), Nassoro Warioba (PW2) and WP 7911 DC Rhobi (PW3). PW1 testified that on 9/6/2015 at night time while on the way going back home, she was confronted by two persons, one in front of her and the other one behind her. The person behind her was wielding a machete. He did beat her with the flat side of it and ordered her to surrender her cell phone. The other person who was in front of her got hold of her hands and repeated the demand for a cell phone. The witness went on to testify that, she told the culprits that she did not have any cell phone and proceeded to raise an alarm which caused a person who was behind her to run away. It was her evidence further that, at the time of raising the alarm, she had managed to get hold of the person who was in front of her.

PW1 went on to state that, following the alarm, PW2, the Street Chairman, who resided near the scene of crime, arrived and assisted to arrest that person who was later identified to be the appellant. With further assistance of other villagers, the appellant was put under restraint

and after the police had been informed, they arrived and took him to police station.

The evidence of PW1 was supported by that of PW2 who testified that, on the material date at about 21:30, after having heard the alarm raised by PW1, he went to the scene and found her having got hold of the appellant. He said that, PW1 was complaining that the appellant was attempting to steal her cell phone. It was PW2's evidence further that, he ordered the appellant to sit down and because the villagers had gathered at the scene and started to beat him, he prevented them from continuing to do so and proceeded to call the police.

On her part, PW3 was one of the police officers who went to the scene after having received information from PW2 about the incident. She said that, she found the appellant lying down following the beating by the villagers. She testified further that, she also found PW1 at the scene and upon questioning her, she narrated how the appellant had attempted to rob her cell phone.

In his defence, the appellant distanced himself from the offence. He testified that, on the material date, while on the way from Ibinzamata heading to Ngokolo, he met a woman who was drunk. According to his testimony, that woman who was unknown to him, followed him, got hold

of his shirt and started to shout that he had stolen her cell phone and money. He went on to state that, following the shouting, PW2 arrived and separated her from the appellant. Thereafter, PW2 called the police who arrived. He added that despite denying the allegation that he attempted to steal PW1's cell phone, the police embarked on beating him until he became unconscious. He said further that, when he regained consciousness, he realized that he was in a hospital. Later on, he was taken to police station and subsequently charged in court.

Having considered the evidence of the prosecution witnesses and the appellant's defence, the trial court was satisfied that the case against the appellant was proved beyond reasonable doubt. The learned trial Resident Magistrate was of the view that, from the evidence, the appellant was found at the scene by PW2 having been held up by PW1. He found further that, the evidence of PW1 and PW2 was supported by that of PW3. The learned trial Resident Magistrate found also that the evidence of PW1 was credible and thus sufficiently proved that the appellant had indeed committed the offence charged. The trial court thus convicted the appellant and sentenced him to fifteen (15) years imprisonment.

Aggrieved by the decision of the trial court, the appellant unsuccessfully appealed to the High Court where, in terms of s. 45 (2) of

the Magistrate's Courts Act (the MCA) the appeal was transferred to the Resident Magistrate's Court of Shinyanga to be heard by Rujwahuka, Senior Resident Magistrate with Extended Jurisdiction (SRM Ext. Jur.). That notwithstanding, the appeal was heard and determined by S.P. Mwaiseje, (SRM- Ext. Jur.).

In his memorandum of appeal, the appellant has raised three grounds which, for reasons to be apparent herein, we do not intend to outline the same because we need not consider them.

At the hearing of the appeal, the appellant appeared in person, unrepresented while the respondent Republic was represented by Ms. Caroline Mushi assisted by Ms. Emmaculate Mapunda, both learned State Attorneys.

Before the appeal could proceed to hearing on merit, we required the learned State Attorney to submit on whether or not Mwaiseje, (SRM-Ext. Jur.) had jurisdiction to entertain the matter which, according to the order of the High Court transferring the appeal to the Resident Magistrate's Court, directed that the appeal be heard by Rujwahuka, (SRM-Ext. Jur.).

In her submission, Ms. Mushi conceded that, since the appeal was not transferred to the Resident Magistrate's Court to be heard by Mwaiseje

(SRM-Ext. Jur.), the said Magistrate did not have the requisite jurisdiction to entertain it. The learned State Attorney submitted therefore, that the proceedings before the 1<sup>st</sup> appellate court were a nullity. She prayed for an order nullifying the same and consequently, quash the resultant judgment.

The appellant did not have much to submit. He urged us to consider his grounds of appeal, allow them and release him from prison.

As reflected by the record, the appeal was not transferred to the Resident Magistrate's Court of Shinyanga to be heard by Mwaiseje (SRM-Ext. Jur.) but Rujwahuka (SRM-Ext.Jur.). When an appeal is transferred by the High Court under s. 45 (2) of the MCA to the Resident Magistrate's Court to be heard by a Resident Magistrate who has been vested with extended jurisdiction under s. 45 (1) of the MCA, that order must specify such a Magistrate.

Clearly therefore, when a transferred appeal is heard by the Magistrate who is not named in the transfer order, then, notwithstanding the fact that he is vested with extended jurisdiction, the proceedings become a nullity for having been conducted contrary to the transfer order.

- See for instance the cases of **Ally Athuman and Charles Mazengo v. Republic** [2009] T.L.R 26 and **Fidelis Mlelwa & Another v. Republic**,

Criminal Appeal No. 248 of 2015 (unreported). In the former case, the appeal was transferred to the Resident Magistrate's Court of Dodoma to be heard by S.N. Mafuru (PRM-Ext. Jur.). Later on however, since Mafuru, PRM passed away, the matter was heard by Somi (PRM-Ext. Jur.). The Court found that the proceedings conducted by Somi, (PRM-Ext. Jur.) were a nullity. It observed that, following the death of the Magistrate who was assigned to hear the appeal, the record should have been sent back to the High Court for it to re-assign the appeal to another Resident Magistrate with extended jurisdiction.

Similarly, in the latter case, the Resident Magistrate with extended jurisdiction (Dyansobera, PRM) heard an appeal while there was no formal order of the High Court transferring it to him. Having considered the provisions of s. 45 (2) of the MCA, the Court observed as follows:

*"There is no formal order which transferred [Criminal Appeal] No. 22 of 2007 to be heard by Mr. Dyansobera, PRM-Extended Jurisdiction. This means that the proceedings in RM Criminal Appeal No. 22 and 25 of 2007 were unlawfully before him for lacking of an order issued by the High Court under section 45 (2) of the Magistrate's Courts Act . . . ."*

Having so found, the Court proceeded to declare the proceedings conducted by Dyansobera (PRM-Ext. Jur.) a nullity.

In the present case, the position is similar. The transfer order did not direct that the appeal be heard by Mwaiseje (PRM-Ext. Jur.). We therefore find, with respect, that the proceedings conducted before her were a nullity. In the event, we exercise the powers of revision vested in the Court under s. 4 (2) of the Appellate Jurisdiction Act and hereby nullify those proceedings and set aside the judgment. The record should be remitted to the High Court for expeditious process for the hearing of the appeal in accordance with the law.

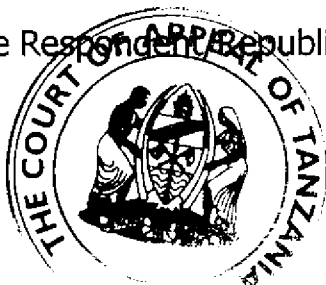
**DATED at SHINYANGA this 10<sup>th</sup> day of November, 2022.**

A. G. MWARIJA  
**JUSTICE OF APPEAL**

R. J. KEREFU  
**JUSTICE OF APPEAL**

P. M. KENTE  
**JUSTICE OF APPEAL**

This Judgment delivered this 10<sup>th</sup> day of November, 2022 in the presence of the Appellant in person and Ms. Edith Tuka learned State Attorney, for the Respondent, is hereby certified as a true copy of the original.



  
G. H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**