

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MWANZA**

**CIVIL APPEAL NO. 66 OF 2020**

**(CORAM: MUGASHA, J.A., KENTE, J.A. And MASHAKA, J.A.:)**

**GEITA GOLD MINE .....APPELLANT**

**VERSUS**

**1. TRUWAY MUNETH }  
2. YASEMA KUYELA } .....RESPONDENTS**

**(Appeal from the Decision of the High Court of Tanzania  
at Mwanza)**

**(Gwae, J.)**

**dated the 17<sup>th</sup> day of November, 2017**

**in**

**HC. Civil Appeal No. 17 of 2017**

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**JUDGMENT OF THE COURT**

10<sup>th</sup> & 13<sup>th</sup> July, 2023

**KENTE, J.A.:**

To say that the real question arising out of this appeal has been dealt with by this Court umpteen times, is to state the obvious. Since we are not travelling on an uncharted territory, our intention in this judgment is a relatively quick glance at the jurisprudence arising out of the practical applicability of the individual calendar system, the problems thrown up by its violation together with their legal effect.

Until the time which is contemporaneous with the occurrence of the incident ultimately giving rise to the present appeal, the respondents were

employed as Security Officers by G4S Secure Solutions Tanzania Limited a company which had been contracted by Geita Gold Mine the appellant herein, to provide it with security services at her gold mining site in Geita Region. During the night hours on 12<sup>th</sup> March 2012, while the respondents and other security officers not parties to this appeal were on duty, the appellant's warehouse was broken into and an assortment of goods totally valued at Tshs. 401,530,714.20 were stolen therefrom. The incident was reported to the police whereupon the respondents and other security officers were suspected, arrested and subsequently tried by the Geita District Court in Criminal Case No.169 of 2012. Whereas in the first count, the respondents and other were charged with store breaking contrary to section 296(a) and (b) of the Penal Code, in the second count, they were charged with stealing contrary to sections 258(1) and 265 of the Penal Code. Finally, is the third count which charged them with the offence of neglect to prevent the commission of an offence contrary to section 383 of the Penal Code. Upon the respondents' denial of the charge, a full trial was conducted.

However, in a ruling delivered on 1<sup>st</sup> April, 2014 (Kesase PDM), the respondents were found to have no case to answer. They were accordingly discharged in terms of section 230 of the Criminal Procedure Act, Chapter 20 of the Revised Laws.

Following their acquittal by the trial court in the criminal case, and their firm conviction being that they were prosecuted by the appellant company maliciously without reasonable and probable cause, the respondents lodged a suit in the Resident Magistrates' Court of Mwanza seeking among other reliefs, payment of Tshs.80,000,000.00 each being specific damages and Tshs.80,000,000.00 being general damages for malicious prosecution and false imprisonment. The respondents claimed that, as a result of being arrested and unsuccessfully prosecuted, their reputation in society was lowered and they suffered both general and special damage.

In her written statement of defence, the appellant company denied the respondent's claim of malicious prosecution and maintained that, she had reasonable and justifiable cause to report the theft incident to the law enforcement organs who took over the matter and went on charging the respondents with the above-mentioned offences.

After hearing the parties, the trial Resident Magistrate's Court of Mwanza was satisfied that indeed the appellant had caused and been instrumental to the respondents' malicious prosecution. Upon that finding, the trial court proceeded to grant all the claims by the respondents as pleaded along with costs.

As could be expected, the appellant was aggrieved by the decision of the trial court. She accordingly preferred an appeal to the High Court (sitting at Mwanza) which partly allowed the appeal and reduced the amount of damages awarded to the respondents from Tshs. 80,000,000.00 to Tshs. 38,000,000.00 each.

Still aggrieved, the appellant brought this appeal advancing eight grounds of complaint which for the reasons to be made apparent in the course of this Judgment, we deem it unnecessary to reproduce. Suffice it to say that, under the first ground of appeal which is sufficient to dispose off this matter, the appellant is faulting the first appellate court for failing to nullify the trial court's proceedings and judgment on the ground that the successor Magistrate Moshi-RM, did not assign reasons for taking over the trial of the case from his predecessor Kalegeya – RM.

At the hearing of this appeal, whereas the appellant was represented by Mr. Libent Rwazo learned advocate, Mr. Julius Mushobozi learned advocate appeared for the respondents.

At the outset, Mr. Mushobozi intimated to the Court that, he was conceding that indeed, the trial was vitiated by the non-observance of the law in the succession between the two trial magistrates.

Expounding on the first ground of appeal, and upon concession by Mr. Mushobozi, Mr. Rwazo was very brief but direct to the point. In

essence, his submission was to the effect that, by reason of improper and undocumented succession between the trial magistrates, there was a mishandling and misapprehension of the evidence as the successor magistrate did not properly comprehend the evidence which was received and recorded by his predecessor. Relying on the provisions of Order XVIII Rule 10(1) of the Civil Procedure Code (Chapter 33 of the Revised Edition) (the CPC), which allows a successor magistrate or judge to take over the trial from his or her predecessor who is prevented by death, transfer or any other cause from concluding the trial, and proceed from the stage at which the predecessor had left it, Mr. Rwazo reminded us of the position which we had taken in our earlier decisions including the case of **Mariam Sambro (Legal Personal Representative) of the late Ramadhani Abbas v. Masoud Jumanne Joshi and Two Others**, Civil Appeal No. 109 of 2016 (unreported) that:

*"The rationale behind existence of Order XVIII Rule 10(1) of the CPC in the effect is that, recording of reasons of take over the trial of the suit by a judge is a mandatory requirement as it promotes accountability on the part of the successor judge. This means, failure to do so amounts to procedural irregularity which in our respective view and as rightly stated by Mr. Shayo and Mr. Mtenga cannot be cured by the overriding objective principle suggested by Dr. Lamwai"*

Upon the above-position of the law, Mr. Rwazo invited us to invoke our revisional jurisdiction in terms of section 4(2) of the Appellate Jurisdiction Act, Chapter 141 of the Revised Laws, and nullify the proceedings, quash and set aside the judgments and decrees of the two lower courts and subsequently order for the trial to proceed from the 15<sup>th</sup> September, 2016 when the successor magistrate took over the trial from his predecessor.

We accept the invitation by Mr. Rwazo without demur. While it is true as stated earlier on that, under the provisions of Order XVIII Rule 10(1) of the CPC, succession of trial between magistrates or judges is a time-honored judicial practice, the required condition under the law is the recording of the reasons for the take over by the successor magistrate or judge from the predecessor. (See the case of **M/s Georges Limited V. The Attorney General and Another**, Civil Appeal No.29 of 2016 (unreported).

As it will be noted at once, with the advent of the individual calendar system, we held towards the end of the 20<sup>th</sup> century in the case of **Fahari Bottlers Limited and Another V. Registrar of Companies and Another** [2000] T.L.R 102 that:

*"The individual calendar system requires that once a case is assigned to a judge or magistrate, it has*

*to continue before that judge or magistrate unless there are good reasons for doing otherwise. The system is meant not only to facilitate case management by trial magistrates and judges but also to promote accountability on their part. **Failure to follow this procedure was certainly irregular and was amenable to the revision process.***

*[Emphasis added]*

Needless to say, the above-quoted is still good law which has not only survived against all odds but also worked in tandem with the overriding objective principle. (See **Mariam Samburo** (supra)).

Upon the above exposition of the law which is based on our own richly detailed jurisprudence, we entirely agree with the two learned counsel who appeared before us and submitted that, the succession of trial between Kalegeya – RM and Moshi-RM was improper and, on that account, it cannot be allowed to stand more so when there is a complaint by the appellant that the successor magistrate completely misapprehended the evidence received by his predecessor. In so holding, we respectfully disagree with the learned judge of the first appellate court who did not find it irregular for the successor magistrate not to put on record the reasons for the succession.

In fine therefore, without recourse to other grounds, we allow this appeal and proceed to nullify the proceedings before the two lower courts up to the 15<sup>th</sup> September, 2016 when Moshi-RM took over the trial from Kalegeya-RM. We quash and set aside the resultant two judgments and decrees as we simultaneously order for the trial to proceed from there before another magistrate with competent jurisdiction according to law. Given the fact that the appeal before the High Court and subsequently to this Court was occasioned mainly if not wholly by the trial court, we order for each party to bear its own costs.

**DATED at MWANZA** this 12<sup>th</sup> day of July, 2023.

S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

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

L. L. MASHAKA  
**JUSTICE OF APPEAL**

The Judgment delivered this 13<sup>th</sup> day of July, 2023 in the presence of Mr. Libent Rwazo, learned Counsel for the Appellant, and holding brief for Mr. Julius Mushobozi, learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is hereby certified as a true copy of the original.



  
J. E. FOVO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**