

IN THE HIGH COURT OF TANZANIA

AT MWANZA

CRIMINAL REVISION NO. 4 OF 2001

(Originating from District Court Geita Criminal
Appeal No. 28 of 2000)

PETER KEFA APPLICANT

Versus

THE REPUBLIC RESPONDENT

R U L I N G

NCHALLA, J.

This revision was opened in order for the High Court to consider the propriety of procedure which was adopted by the presiding District Magistrate (Mr. Mrisho, Esq, District Magistrate) in hearing (PC) Criminal Appeal No. 28/2000.

The said appeal was filed in the District Court at Geita, on 11/10/2000 as supported by the appellant's petition of appeal which was forwarded to the District court on that date by the Geita Prison officer In-charge on behalf of the appellant. On the same date the appeal was opened, it was submitted to Mr. Mrisho, learned District Magistrate. On that day the parties were absent, but the said District Magistrate adjourned the appeal for judgment on 13/10/2000 without hearing the appeal. On 13/10/2000 the learned appellate District Magistrate delivered his judgment in the absence of the parties, and he allowed the appeal, thereby quashed the conviction, set aside the sentence and ordered the immediate release of the appellant from prison.

At the hearing of this revision Mr. Mgengeli, learned State Attorney submitted that the judgment of Mr. Mrisho learned District Magistrate in (PC) Criminal appeal No. 28/2000 is legally incompetent because it was reached contrary to mandatory provisions of the law which deal with the procedure on the hearing and determining of

appeals in subordinate courts. Mr. Mgengeli invited this court to quash the said judgment and order the appeal be heard de novo by another District Magistrate of competent jurisdiction in the same court.

I quite agree with and uphold Mr. Mgengeli, learned State Attorney, that the procedure which is applicable to the subordinate courts and also to the High Court in hearing and determining appeals, was not at all adhered to by Mr. Mrisho in (PC) Criminal Appeal No. 28/2000. Section 34(1) of the Magistrates' Courts Act No. 2/1984 is express and mandatory on this point, the same provides:

"34-(1) Save where an appeal is summarily rejected by the High Court and subject to any rules of court relating to substituted service, a court to which an appeal lies under this Part shall cause notice of the time and place at which the appeal will be heard to be given - (a) to the parties or their advocates; *

(underlining provided)." This mandatory legal procedure was not complied with in hearing (PC) Criminal Appeal No. 28/2000 by Mr. Mrisho learned District Magistrate. Consequently, the judgment which he pronounced in that appeal is null and void, the same is hereby quashed. It is ordered that the appeal in question be heard de novo by another District Magistrate of competent jurisdiction at Geita District Court. It is further ordered that the appellant one Peter Kefa who was released from prison be arrested and committed back to prison forthwith, to await the hearing of his appeal de novo by another District Magistrate as the Senior District Magistrate In-charge at Geita District Court will in his discretion appoint and assign, but excluding Mr. Mrisho, learned District Magistrate. It is so ordered.


M.D. NCHALLA

JUDGE

15/9/2001

3/10/2001

Coram : M.D. Nchalla, J.

Applicant: Absent

Republic/Respondent: Mr. T. Vitalis, State Attorney

C.C. Mrs. Hamza

Court: Ruling delivered in chambers at Mwanza in the presence of
Mr. T. Vitalis, learned State Attorney, this the 3rd day
of October, 2001. Right of appeal explained.


M.D. NCHALLA

JUDGE

AT MWANZA

3/10/2001