

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

**CRIMINAL REVISION No.13 OF 2003
(Originating from Cr. Case No.150 of 2003
in the District Court of Temeke)**

REPUBLIC.....APPLICANT

VERSUS

TWALIBU UBWA.....RESPONDENT

R U L I N G

SHANGWA, J.

In this case, there is only one issue to be resolved by this Court. That is whether or not the acquittal of the Respondent Twalibu Ubwa by the District Court of Temeke made on 27/5/2003 in Criminal Case No.150 of 2003 was correct and proper.

Going through the trial court's record, it will be seen that before his acquittal, the Respondent stood charged with the offences of burglary and stealing c/ss 294 (1) and 265 of the Penal Code

respectively. It will also be seen that the trial magistrate Mtinginjola, DM acquitted the Respondent on ground that the case had taken a long time in court. The following is what was recorded on the day when he was acquitted and I quote:

" 27/5/2003

Coram: 1. Mtinginjola – Dm

PP: A/Insp. Wilson

CC: Fatuma

Acc:

P.P: We don't have witness.

Court: As the matter has long time before this court, under the inherent power this court has I hereby acquit the accused forthwith.

Sgd: 1. Mtinginjola – DM

27/5/2003. "

Learned State Attorney for the Applicant Mr. G. J. Mdemu submitted that the trial Court's action of acquitting the Respondent was unfounded. He contended that there was no delay in prosecuting the Respondent and that his acquittal was irregular.

On the other side, the Respondent submitted that there was a delay of justice in his case. His argument is that as there was such a delay, the trial court was justified in acquitting him.

Let me state at once that in actual fact, the trial court's action of acquitting the Respondent was quite wrong both in fact and law. The record clearly shows that he was taken before the trial court on 3/3/2003. The charges were read over and explained to him. He denied them. He was released on bail. Thereafter, his case was kept on being to be adjourned until when he was acquitted on 27/5/2003. If one may count from the date when he was charged in the trial court to the date when he was acquitted by the same court, it is a period of two months and twenty four days only. To be realistic, in

criminal trials, the said period cannot be said to be a long one. But, even if it were to be a long one, the trial court would not have been justified in acquitting the Respondent as it did on the sole ground that the case had taken a long time.

It is common knowledge in the whole of East Africa that a delay in criminal trials does not form the basis of acquittal of an accused person. In Tanzania, Subordinate Courts are only empowered to discharge the accused in respect of certain offences including the ones with which the Respondent was charged, where the prosecution, after a specified period of time, is unable to proceed with the hearing without having filed a certificate in court stating the need and grounds for adjourning the case. However, any such discharge does not operate as a bar to a subsequent charge against the accused for the same offence or offences. The aforesaid courts are so empowered under S. 225 (5) of the Criminal Procedure Act, 1985 in order to restrict unnecessary adjournments of Criminal trials before such courts.

I am of the view that in this case, the inherent powers of the court were wrongly invoked by the trial magistrate in acquitting the Respondent. Such powers are usually invoked in cases where there is no enabling provisions for doing justice. In this case, the said powers were arbitrarily invoked in favour of the Respondent in order to defeat the ends of justice as the Respondent was acquitted in the presence of the Complainant A/Insp. Wilson who was not able to proceed with the hearing for lack of witnesses who had not turned up on that particular day to testify on behalf of the Prosecution.


Under the provisions of the Criminal Procedure Act, 1985, an accused can be acquitted in cases where the complainant has not appeared on the date fixed for hearing or where there is no case to answer or where there is no evidence upon which to base a conviction as provided for under SS 222, 230 and 235 (1) of the Act respectively. This case did not fall under any of such circumstances.

Let me add that under the circumstances of this case, it was not necessary for the Applicant to file an appeal in this Court against


the trial Court's order of acquittal as argued by the Respondent. It was quite proper for the Applicant to file this Application for revision of the trial court's order which appears to be quite irregular on the face of the said court's record.

Therefore, I allow this application and order that Criminal Case file No.150 of 2003 should immediately be returned to the District Court of Temeke to continue with the Criminal proceedings against the Respondent in respect of the charges with which he was facing before his acquittal. The trial should continue before another magistrate with competent jurisdiction. It is so ordered.




A. Shangwa
JUDGE
27/5/2005

Delivered in court at Dar es Salaam this 27th day of May, 2005.


A. Shangwa
JUDGE
27/5/2005