

IN THE HIGH COURT OF TANZANIA

AT BUKOBA



H/C CRIMINAL APPEAL NO. 14/2006

(Arising from Bukoba District Court Criminal

Case No. 386/2005)

(Before: W.R.Mashauri - RM)

BOAZ BARNABAS=====APPLICANT

V/S

THE REPUBLIC=====RESPONDENT

JUDGMENT.

SAMBO,J.

This appeal consolidates other appeals of **Amina Ismail, Erick Mulinga, Godfrey Sylvanus, Respicius Byonyu, Hosea Mshumbusi, Gaspari Titus and Vitalis Dens.** Inclusive also are appeals

of Erick Shabani **Paul Mbuzi, Sylvanus Wilbard Confort Athanas, Dickson Kakolaki, Devotha Baziwane, Mayunga Suleman and Kwizera Ernest.** The consolidated appeals are of the following numbers respectively H/C Criminal Appeal No. 15/2006, 16/2006, 17/2006, 19/2006, 24/2006, 21/2006, 22/2006, 23/2006, 20/2006, 25/2006, 26/2006, 27/2006, 28/2006, 29/2006 and 30/2006. Both appellants are represented by the learned counsel, Mr. Mathias Rweyemamu.

Both appellants are aggrieved with the ruling of the District Court of Bukoba dated 9th day of January, 2006. That decision was a ruling dismissing the preliminary objection on points of Law raised by the learned counsel, Mr. M. Rweyemamu on behalf of all

the appellants. The matter is centred on Criminal Case No. 386/2005 in which all the appellants are the accused persons. The case was opened by the Republic on the 21st day of October, 2005, and continued to appear in court for mentions until the 9th day of January, 2006, when the Republic wanted to substitute the charge sheet. The learned counsel, Mr. Mathias Rweyemamu, raised an objection to the effect that the substituted charge be not accepted and the accused persons who are now the appellants be discharged. He submitted as such because since the case was instituted on 21st day of October, 2005, to 9th day of January, 2006, when they wanted to substitute the charge sheet, it was about 90 days. He was convinced that the case is illegally before the

· Court in respect of Section 225 (4) and (5) of the Criminal Procedure Act, CAP. 20 R.E. 2002, because no certificates of either the Regional Crimes officer, the State Attorney or the Director of Public Prosecution had been filed in respect of the mandatory provisions of sub-section (4) (a) (b) and (c) of this section. The learned counsel, Mr. Mathias Rweyemamu, was and still is of the considered opinion that when the 60 days had passed from the day the case was instituted, and no certificates had been filed for extension of time, the case was unlawfully before the Court. However, the learned resident magistrate overruled him, admitted the substituted charge sheet and proceeded with the hearing of the case under Section 192 of CPA, CAP.

20 R.E. 2002. Being aggrieved with this decision, both accused persons preferred the present appeal.

The appeal was admitted for the Court to consider whether the ruling in question is appellable in Law. To answer this question, I directed my mind to written Laws (Miscellaneous Amendments) Act No. 25 of 2002 which amends section 359 of the Criminal Procedure Act, 1985, by adding immediately after subsection (2) the following subsection-

"(3) Notwithstanding the provisions of subsection (1) and (2), no appeal shall lie against or be made in respect of any preliminary or interlocutory decision or order of a subordinate Court unless such decision or order has the effect of finally determining the Criminal charge."

The ruling of the subordinate Court dated the 25th day of January, 2006, which is the subject of the present

appeal, is a preliminary or interlocutory decision. The same does not finally determine the Criminal charge in Criminal case no. 386/2005, in the District Court of Bukoba. For that matter, the decision is, therefore not appellable. The appeal has been made per incurium. I dismiss the same in its entirety and order that the District Court Criminal Case No. 386/2005 case file be remitted back so that the trial of the case can proceed accordingly.

K.M.M. Sambo,

JUDGE

04 /4/2007

Delivered in chambers this 4th April, 2007, in the presence of four appellants and their Advocate Mr.

Mathias Rweyemamu and the learned State Attorney,
Mr. Ndjike, for the Republic.

K.M.M. Sambo,

JUDGE

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