

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CRIMINAL APPEAL NO 139 OF 2016

(Appeal from the decision of the Resident Magistrate's court of Morogoro at Morogoro in Criminal Case No. 41 of 2015 dated 18th February, 201 before

Hon. I Msacky, RM)

1. FINIASI LIBWELA

2. EMMANUEL JUSTINE.....APPELLANTS

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

28 February & 13 March, 2018

DYANSOBERA, J:

The appellants, **Finiasi Libwela and Emmanuel Justine** were arraigned before the Resident Magistrate Court of Morogoro for the offence of armed robbery c/s 287A of the Penal Code [Cap 16 R.E 2002]. They were convicted and sentenced to serve a term of 30 years imprisonment. Aggrieved with the trial Court's verdict, they have preferred the instant appeal.

Finally she submitted that failure to comply with section 214 of the law is incurable and so prayed the case file to be remitted back to the trial Court so that the requirement of the law can be fulfilled.

The Court after passing through the record it has noted the case file was handled by different magistrates at the trial Court as rightly observed by Ms.Neema Mbwana, learned State Attorney. The procedure for the transfer of the cases from the presiding magistrate/judge to another is provided under the provision of section 214(1) of the CPA (Supra).

The Court has noted nothing in record suggesting that the trial Court (**Hon.Msacky Rm**) complied with the requirement of section **214(1)** of the law when taking over the matter from the predecessor magistrate.

The Court is of the firm view that non compliance with the provisions of section 214(1) of the law in the manner exhibited by the learned second trial magistrate in this case is a fatal irregularity. In the case of **Priscus Kimaro V Republic Criminal Appeal No 301 of 2013**(Unreported) the Court held that:-

“Where it is necessary to reassign a partly heard matter to another magistrate, the reasons for the failure of the first magistrate to complete the case must be recorded”

I find this to be a sound reason and subscribe wholly to it, as was the case by the Court of Appeal in the case of **Ramadhan Mohamed and Ndalule Selemani v. Republic**, Criminal Appeal 59 of 2011(unreported).

Furthermore, in the case of **Abdi Masoud @Ibuma and three others v. Republic**, Criminal Appeal No 116 of 2015(Unreported) the Court succinctly emphasized that:-


“In our view under section 214(1) of the CPA it is necessary to record the reasons for re assignment or change of trial Court Magistrates”

It is for this clear reason that the Court in **Adam Katundu V Republic Criminal Appeal No 360 of 2014(Unreported)** unequivocally held that where a successor magistrate proceeds with the case without stating clearly the reasons for his taking over, the procedure before him are a nullity.

In the light of the above undisputed facts, the proceeding before the successor magistrate at the trial Court are nullity, The Court is enjoined by the law to quash them together with the resultant judgment and set the a side. I remit the record to the trial Court to proceed with the trial from the stage it had reached before it was taken by the successor magistrate.

In case of conviction the time served by the appellant as a convict prisoner should be deducted from the sentence to be imposed. The appellant should be held in custody as remand prisoner until his trial which should be given first priority by the trial Court.




W.P. Dyansobera

JUDGE

13.3.2018