

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.....1ST APPELLANT

2. EMMANUEL JUSTINE.....2ND APPELLANTS

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

28 February & 13 March, 2018

DYANSOBERA, J.:

The above two appellants, that is, Finiasi Libwela and Emmanuel Justine, the 1st and 2nd appellant, in that order, were arraigned before the Resident Magistrate Court of Morogoro for the offence of armed robbery c/s 287 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.

At the hearing of this appeal, the appellants appeared in person/unrepresented while the Republic/respondent was represented by Ms. Neema Mbwana, learned State Attorney. Learned State Attorney raised a legal issue in respect of the procedural irregularities appearing in record during the transfer of the case at the trial Court. For the matter of principle of natural justice, the appellants were provided with an opportunity to respond on the raised legal issue. The first appellant, **Finias Libwela** had no idea about the detected snag, he prayed the Court to consider his seven grounds of appeal and set him free.

The second appellant, **Emmanuel Justine** submitted that he filed five grounds of appeal and in addition, he was of the view that this matter should not be remitted back to the trial Court. In emphasizing his point he brought into the attention of the Court the decision of **Shaban Seif and Said Abdallah @Cheka Cheka v. Republic Criminal Appeal No 215 of 2015 (Unreported)**.

On her submission Ms. Neema Mbwana, stated that the court proceedings of the trial court reflect that the case was partly heard by different magistrates. According to the record, the case was first presided by Hon.Nassary RM then Hon.Msacky RM took over but at page 37 of the proceeding the Court said Section 214 would be complied with.

Furthermore, she stated that nowhere was it stated that the appellant were addressed in terms of **section 214 of CPA** (Supra).She insisted that the same provision is mandatory and reasons have to be given and recorded in order to remove chaos which could lead to miscarriage of justice and so failure to observe it is fatal.

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).

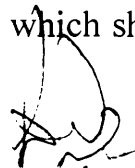
Furthermore, in the case of **Abdi Masoud @Ibuma and three others v. Republic**, Criminal Appeal No 116 of 2015 (unreported) the Court succinctly emphasized that: -

“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