

**THE HIGH COURT OF TANZANIA**

**AT SUMBAWANGA**

**CRIMINAL REVISION NO. 6/2018**

(From Mpanda District Court Economic Criminal Case No. 1/2016)

**THE REPUBLIC.....APPLICANT**

**VERSUS**

**1. GODFREY ATHANASE MAJUTO**

**2. NAOMI NDI LILIO NNKO**

**3. PETRO JUF GEN MWANONI .....RESPONDENTS**

**4. BEATUS JOSEPH BISESA**

**5. CHIYANDO MUYENJWA MATOKE**

**RULING**

*Date of Ruling: 07/01/2019*

**Dr. A.J. Mambi,**

This Ruling emanates from revision made by this Court under section 372 of the Criminal Procedure Act, Cap 20 [R.E.2002].

The Court made revision of the District Court of Mpanda *suo moto* after realizing that the trial court made some errors. The Court was also moved by the Republic to go through the entire proceedings and Judgment of the trial Court and determine the illegality and correctness of that decision on the first accused person. This Court exercised its inherent powers in terms of sections **224A, 372** and

**374** of the Criminal Procedure Act, Cap 20 [R.E2002] and section 44 (1) (a) and (b) of Magistrates Courts Act Cap 11 [R.E. 2002].

Earlier in the District Court of Mpanda the first, the third and fourth accused persons were found guilty. They were all convicted and sentenced. Having realized some irregularities at the District Court, this court in terms of section 372 and 373 of the Criminal Procedure Act, Cap 20 [R.E. 2002] and section 44(1) (a) and (b) of the magistrates Courts Act, Cap 11 [R.E. 2002] called for the records to go through those records, to determine the legality and correctness of the decision of the District Court.

During hearing of this matter, the republic was represented by the learned Senior State Attorney Mr. Mwandoloma. The learned Senior State Attorney submitted that, this court called for the records after realizing some irregularities on the proceedings and judgment emanative from an economic case No. 1 of 2016 at the District Court of Mpanda. He argued that this matter which has raised the concern of the public resulted from the decision of the Mpanda District Court which erroneously convicted and sentenced one accused namely Godfrey Athanas who had already died. Mr. Mwandoloma argued that worse enough the Magistrate being aware that the accused is dead deceased to order the payment of the fine to be paid by the order be executed by the Republic as decree through the deceased administrator to be appointed. He argued that this was contrary to Section 224A of CPA which provides that where the accused has died, his case shall automatically abate. Mr.

Mwandoloma was of the view that since the trial Court failed to comply with the provisions of the law, all proceedings and Judgment had to be nullified since they are nullity.

I have considerably gone through the submission by the applicant. There is no doubt that this matter involve the revision of the decision of the subordinate court that is the District Court. In this regard, the question before this court is whether there was irregularity and illegality on the decision made by the Tribunal to warrant this court to intervene such decision. Before I determine the legal issue at hand, let briefly highlight the concept on revision powers of the court. A revision is an examination by a higher court of the record of proceedings before a lower court in order to satisfy itself of the correctness, legality or propriety of a finding, order or any other decision and the regularity of those proceedings before that lower court See ***Benedict Mabalanganya v Romwald Sanga civil Application 1 of 2001, Court of Appeal of Tanzania at Mbeya (2004) (unreported)***. Generally, the High Court can exercise its revisional jurisdiction either *suo moto* or on application. See also *Mirindo F. on Administration of Justice in Mainland Tanzania, Law Africa 2014* at page 632.

In Tanzania, the High Court has the power to revise the proceedings of the District Land and Housing Tribunals if it appears that there has been an error material to the merits. The inherent revisionary powers of the High Court on criminal matters are enshrined under

both section 372 of the Criminal Procedure Act, Cap 20 [R.E.2002]. Indeed that section provides as follows:

*“The High Court may call for and **examine** the record of any criminal proceedings before any subordinate court for **the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed**, and as to the regularity of any proceedings of any subordinate court.*

Furthermore, section 373 of the same Act provides that:

*“(1) In the case of any proceedings in a subordinate court, the record of which has been called for or which has been reported for orders or which otherwise **comes to its knowledge**, the High Court may–*

*(a) in the case of conviction, exercise any of the powers conferred on it as a court of appeal by sections 366, 368 and 369 and may enhance the sentence; or*

*(b) in the case of any other order other than an order of acquittal, **alter or reverse such order**, save that for the purposes of this paragraph a special finding under subsection (1) of section 219 of this Act shall be deemed not to be an order of acquittal.*

The underlying object of the above provisions of the two laws are to prevent subordinate courts from acting arbitrarily, capriciously and illegally or irregularly in the exercise of their jurisdiction. See **Major S.S Khanna v. Vig. F. J. Dillon, Air 1964 Sc 497 at p. 505: (1964) 4 SCR 401; Baldevads v. Filmistan Distributors (India) (P) Ltd., (1969) 2 SCC 201: AIR 1970 SC 406**. The provisions cloth the High court with the powers to see that the proceedings of

the subordinate courts are conducted in accordance with law within the bounds of their jurisdiction and in furtherance of justice. This enables the High Court to correct, when necessary, errors of jurisdiction committed by subordinate courts and provides the means to an aggrieved party to obtain rectification of non-appealable order. In other words, for the effective exercise of its superintending and visitorial powers, revisional jurisdiction is conferred upon the High Court. See *C.K.Takwani in Civil Procedure in India, 7<sup>th</sup> edition, New Delhi 2015 at page 587-612..* See also ***Manick Chandra v. Debdas Nandy, (1986) 1 SCC 512 at pp. 516 -17: AIR 1986 SC 446.***

Looking at our law there is no dispute that this court has power to entail a revision on its own motion or *sua moto*. The court can also do if it is moved by any art as done in this matter at hand. Looking at the records, I am of the settled mind that this court has satisfied itself that there is a need of revising the legality, irregularity, correctness and propriety of the decision made by the trial and appellate courts. There is no doubt as the position of law stands that where the accused dies before the judgment is reached the trial or that that matters against that particular accused must abet. This is provided under section **224A** of the Criminal Procedure Act Cap 20 [R.E.2002] which deals with abatement of trial in subordinate courts. In particular that section provides as follows:

*“Every trial under this Part shall abate on the death of the accused person”.*

The word “**shall**” under the provision implies mandatory as per the Interpretation of Law of Interpretation Act Cap 1 [R.E.2002].

It is clear from the records that the trial Magistrate found all the accused guilty but he ought to consider that one of the accused (GODFREY MAMUTO) had already died and his case was supposed to abate as per section of the **224A** of the Criminal Procedure Act Cap 20 [R.E.2002]. However, the Magistrate misdirected himself and proceeded to convict and sentenced the deceased person apart from being aware of his death. To show that the Magistrate was aware of the illegality went further by ordering non-existent administrator to pay the fine on behalf of the deceased person.

Now having observed those serious irregularities, the question before me is to determine what should be the best way to deal with this matter in the interest of justice. In my considered view the best way to deal with this matter is by way of revision. In this regard I wish to invoke section 272 and 273 of the Criminal Procedure Act, Cap 20 [R.E.2002] which empowers this court to exercise its revision powers to examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any subordinate court. This in accordance with section 372 of the Act. Section 373 further empowers the court that in the case of any proceedings in a subordinate court, the record of which comes to its knowledge, the High Court may in the case of conviction, exercise

any of the powers conferred on it as a court of appeal by sections 366, 368 and 369 and may enhance the sentence. The Court is also empowered in the case of any other order other than an order of acquittal to alter or reverse such order.

I wish to refer section **372** of the Criminal Procedure Act, Cap 20 [R.E.2002] as follows:

*“The High Court may call for and **examine** the record of any criminal proceedings before any subordinate court for **the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed**, and as to the regularity of any proceedings of any subordinate court.*

Furthermore, section 373 of the same Act provides that:

*“(1) In the case of any proceedings in a subordinate court, the record of which has been called for or which has been reported for orders or which otherwise **comes to its knowledge**, the High Court may–*

*(a) in the case of conviction, exercise any of the powers conferred on it as a court of appeal by sections 366, 368 and 369 and may enhance the sentence; or*

*(b) in the case of any other order other than an order of acquittal, **alter or reverse such order**, save that for the purposes of this paragraph a special finding under subsection (1) of section 219 of this Act shall be deemed not to be an order of acquittal.*

*(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence; save that an*

*order reversing an order of a magistrate made under section 129 shall be deemed not to have been made to the prejudice of an accused person within the meaning of this subsection.*

*(3) ...*

*(4) Nothing in this section shall be deemed to preclude the High Court converting a finding of acquittal into one of conviction where it deems necessary so to do in the interest of justice*

*(5)....”*

Reading between the lines on the above provisions of the law empower this Court wide supervisory and revisionary powers over any matter from the lower courts where it appears that there are illegalities or impropriety of proceedings that are likely to lead to miscarriage of justice. Reference can also be made to other laws. In the regard I will refer section 44 (1) (a) and (b) of Magistrates Courts Act Cap 11 [R.E. 2002] which clearly provides that:

*“44 (1) In addition to any other powers in that behalf conferred upon the High Court, the High Court—*

*(a) **shall exercise general powers of supervision over all district courts and courts of a resident magistrate** and may, at any time, call for and inspect or direct the inspection of the records of such courts and give such directions as it considers **may be necessary in the interests of justice**, and all such courts shall comply with such directions without undue delay;*



*(b) may, in any proceedings of a civil nature determined in a district court or a court of a resident magistrate on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it sees fit."*

From the above findings and reasoning, I hold that from the above provision of the law including various decision by the court, this court is right in exercising its supervisory and revisionary power on the matter at hand as noted by the learned State Attorney. The law is clear it is proper to for this court to invoke provisional powers instead of appeal save in exception cases. It is a settled law that failure to comply with mandatory requirement of the provision of the law by any trial court, is a fatal and incurable irregularity, which renders the purported proceedings and judgment against the person who is dead null and void ab initio. In the circumstance and in view of the fact that the trial court convicted and sentenced the deceased person, I declare that the entire proceedings and judgment against the first accused is to that extent fatally defective. The law is clear that where it is found that during proceedings or before the court deliver judgment and the court satisfies itself that the accused is in the criminal case has died, the court must order for abatement of that case against the deceased and it must be recorded under the proceedings and judgment.

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and incurable irregularity, which renders the purported proceedings and judgment against the person who is dead null and void ab initio. In the circumstance and in view of the fact that the trial court convicted and sentenced the deceased person, I declare that the entire proceedings and judgment against the first accused is to that extent fatally defective. The law is clear that where it is found that during proceedings or before the court deliver judgment and the court satisfies itself that the accused is in the criminal case has died, the court must order for abatement of that case against the deceased and it must be recorded under the proceedings and judgment.

Looking at the issues as to whether there were any irregularities in the decision of the trial District Court or not. It is clear as I observed earlier as well as noted by the learned State Attorney that the trial court erroneously proceeded with matter against the deceased persons. It is on the records that, earlier the case involved five accused persons but one of them (the first accused) died in the course of proceedings but the court surprisingly proceeded to convict and sentence the deceased.

Having observed that the trial court acted upon wrong principles and illegalities on matter that involved the dead accused, I find that the proceedings and the Judgment against the first accused (who is dead) before the District Court of Mpanda were nullity. To my surprise, the District didn't bother to note such immense irregularity and it instead went on entertaining an improper matter

before it. In my considered view this was wrong as the Magistrate ought to consider all the documents to satisfy himself on the existence of the first accused persons. Had the Magistrate considered this irregularity he could have been in the better position to abate the case against the first accused and proceed with other living accused persons.

This means that since the District Court entertained the matter against the non-existent accused person contrary to section 224A of CPA Cap 20. I am of the settled view that all proceedings and Judgment entered against the first accused were nullity. This raises and poses some questions to be posed and answered by this court. One of the questions is, were those omissions or irregularities curable or not? It is obvious according to the law that the omission on the first accused persons is not curable and the best way is just to nullify proceedings that involved him while he was dead. The other question to be asked is what will be the position of the other remaining accused that were found guilty. In my view since the other accused were found guilty and convicted while alive unlike the first accused persons, the conviction and sentence against the other remaining accused persons is still valid until they appeal if they wish to do so and if the court will find otherwise.

Thus in terms of sections **224A**, **372** and **374** of the Criminal Procedure Act, Cap 20 [R.E2002] including section 44 (1) (a) and (b) of Magistrates Courts Act Cap 11 [R.E. 2002], I consider quashing the conviction and setting aside the sentence ordered by the District

Court against the first accused person save for the other remaining accused person ; who were found guilty. Order accordingly.

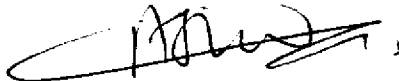


**Dr. A.J. Mambi**

**Judge**

**07.01.2019**

Ruling delivered in Chambers this 7<sup>th</sup> day of January, 2019 in presence of the appellant.

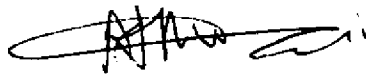


**Dr. A.J. Mambi**

**Judge**

**07.01.2019**

Right of appeal explained.



**Dr. A.J. Mambi**

**Judge**

**07.01.2019**