IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 218 OF 2019

(Arising from the Ruling of the Resident Magistrate's Court of Dar es Salaam at Kisutu in Criminal Application No. 04 of 2019 – Original PI. Case No. 29/2014 before Hon. M. S. Kasonde, RM)

REPUBLIC ..... APPELLANT

VERSUS

FARID HADI AHMED ..... 1ST RESPONDENT

JAMAL NOORDIN SWALEHE ..... 2ND RESPONDENT

NASSOR HAMAD ABDALLAH ..... 3RD RESPONDENT

HASSAN BAKARI SULEIMAN ..... 4TH RESPONDENT

ANTHARI HUMOUD AHMED ..... 5TH RESPONDENT

MOHAMED ISIHAKA YUSUPH ..... 6TH RESPONDENT

ABDALLAH HASSANI HASSAN @ JIBABA ... 7TH RESPONDENT

HUSSEIN MOHAMED ALLY ..... 8TH RESPONDENT

JUMA SADALA JUMA ..... 9TH RESPONDENT

SAID KASSIM ALLY ..... 10TH RESPONDENT

HAMIS AMOR SALUM ..... 11TH RESPONDENT

SAID AMOR SALUM ..... 12TH RESPONDENT

ABUBAKAR ABDALLAH MGONDO ..... 13TH RESPONDENT

SALUM ALLY SALUM ..... 14TH RESPONDENT

SALUM OMAR SALUM ..... 15TH RESPONDENT

ALAWI OTHMAN AMIR ..... 16TH RESPONDENT

RASID ALI NYANGE @ MAPALA ..... 17TH RESPONDENT

AMIR HAMIS JUMA ..... 18TH RESPONDENT

KASSIM SALUM NASSORO ..... 19TH RESPONDENT

SAID SHEHE SHARIFU ..... 20TH RESPONDENT

MSELEM ALI MSELEM ..... 21ST RESPONDENT

ABDALLAH SAID ALLY @ MADAWA ...22ND RESPONDENT

Date of last Order: ***30/3/2020***
Date of Ruling: ***29/5/2020***

JUDGEMENT

MGONYA, J.

The Republic, Appellant herein above, being dissatisfied with the ruling of the Resident Magistrate's Court of Dar es Salaam at Kisutu (hereinafter referred as Kisutu RM's Court) before Hon. M. S. Kasonde - RM delivered on 5th September, 2019; in which the Honourable Magistrate vacated the court order made on 18th June, 2015 which barred the publication of proceedings in respect of **Preliminary Inquiry No. 29 of 2014,** (hereinafter referred as **PI No. 29 of 2014**) hereby appeals to this honourable court upon the following four grounds:

1. ***That, the learned trial Magistrate erred in law and fact by vacating the order made by the same court dated 18th June, 2015.***
2. ***That, the learned trial Magistrate erred in law and fact by holding that the order made on 18th***

June, 2015 by the Resident Magistrate's Court of Dar es Salaam at Kisutu was made inadvertently and therefore the same can be vacated.

3. ***That, learned trial Magistrate erred in law and fact by granting the application while the court was functus officio.***
4. ***That, the learned trial Magistrate grossly erred in law and fact by failing to properly analyze and evaluate the prosecution's submissions including case laws hence arriving at wrong conclusion.***

Wherefore, the Appellant prays that he appeal be allowed and the order of the Resident Magistrate's Court of Dar es Salaam Region at Kisutu dated 5th September, 2019 be set aside.

This appeal emanates from a case which had several Applications, Appeals and Orders thereto in different occasions from the Subordinate Court, High Court to the Highest Court of the Land, the Court of Appeal of Tanzania. That being the case, it is not monotonous, but I am of the opinion that narrating the short history of the matter at hand is of paramount importance for someone who is reading this matter for the first time or even for those who want to refresh their memories on the same.

This matter began way back in **2014** where **Farid Hadi Ahmed and 21 Others Respondents** herein, were charged at the Resident Magistrate's Court of Dar es Salaam at Kisutu with three counts being:

i. ***Conspiracy to commit an offence, contrary to section 27 of the Prevention of Terrorism Act No. 21/2002;***
ii. ***Recruitment of persons to participate in terrorism acts contrary to section 21 (b) of the Prevention of Terrorism Act No. 21/2002; and***
iii. ***Harbouring persons committing terrorism acts contrary to section 19 (a) of the Prevention of Terrorism Act No. 21/2002.***

In February, 2019 while the said matter was still at Kisutu RM's Court for Committal Proceedings, Respondents filed an Application praying before the court two orders in respect of: **1st** an order by the court to order the Investigation of the main case **Preliminary Inquiry No. 29/2014** be completed not longer than 30 days; and **2nd** an order for the court to set aside its order granted on 18/06/2015 which prohibits the media to cover and publish any matter in respect of proceeding in Preliminary Inquiry No. 29/2014 pending at Kisutu RM's court. After the completion of hearing and determination of the said Application, the Resident Magistrate granted the then

Applicants prayers and particularly vacated the order prohibiting the media to cover the proceedings in that case.

The Republic aggrieved by the said decision, preferred the instant appeal, hence this Judgment.

In this Appeal, the Appellant is represented by learned State Attorney Mr. Faraji Nguka; while Mr. Abubakar Salum represents all 22 Respondents.

Before the hearing, Mr. Faraji the learned State Attorney requested the court to drop and consolidate some grounds of appeal and remained with only two grounds as they appear below:

1. ***That the leaned trial Magistrate erred in law and fact by granting the application while the court was functus officio; and***
2. ***That the learned trial Magistrate erred in law by allowing the application, while the court had no Jurisdiction to entertain it.***

The above two grounds are now subject of this Appeal.

Submitting for the above grounds of appeal particularly addressing on the **2nd ground** of appeal that the **learned trial Magistrate erred in law by allowing the application, while the court had no Jurisdiction to entertain it,** the Appellant's State Attorney submitted that it is clear that the learned trial Magistrate erred in Law by not considering

whether he had the power to hear the application before him and decide on the same. On this the Appellant's Counsel reminded the court that the Respondents herein stand charged with the offences under the **Prevention of Terrorism Act No. 21 of 2002** whose Jurisdiction is vested in the High Court as per **section 34 (1)** the said Act. From the said provision, it is the Counsel's concern that, it is clear that the power to hear Terrorism cases is vested to the High Court. He referred the court to the said section and quoted the same as hereunder:

> ***"Section 34 (1) the High Court shall have Jurisdiction to try offences under this Act."***

In the event therefore, the Appellant's counsel is convincing the court that it is clear that the powers to try the case at hand is vested in High Court, and further the fact that the said case is filed in Subordinate court for committal proceedings, does not give the Subordinate Court power to try the matter in any case apart from committing it to the High Court. The Counsel further emphasized that the Subordinate court enjoys limited power to those offences which their original Jurisdiction is vested in the High Court. Referring to the ruling which is subject to this Appeal, it is the Counsel's concern that the trial Magistrate acted *Ultra vires* by entertaining the application filed before him.

Appellant's Counsel further averred that, **Part IV of the Prevention of Terrorism Act No. 21/2002** deals with trial of the case related to the terrorist offences. However, before the trial of the case, as a legal procedure, the case must pass through the Committal proceedings which is governed by the **Criminal Procedure Act Cap 20 [R. E. 2002]**. The mere fact that the committal proceedings are governed by the Criminal Procedure Act does not mean that the Court in which the case is filed for Committal Proceedings has jurisdiction to entertain and determine some legal issues emanating therein. In cementing this position, the Appellant's State Attorney referred this court to the case of ***REPUBLIC VS. FARID HADI AHMED AND 21 OTHERS, Criminal Appeal No. 59 of 2015, Court of Appeal of Tanzania (Unreported) at page 8 to page 15,*** when the Court of Appeal on the powers of committal court, it held that:

> *"...it becomes clear that in committal proceeding the Magistrate has no other role to perform in this regard beyond mere requirement to cause the statement to be read to the accused, in that vein, we hold the view that those matters which were raised before the RM's Court on 03/09/2014 were legal matters to which RM's Court has no Jurisdiction to decide..."*

From the above explanation, it is the Appellants Counsel's concern that the learned trial Magistrate erred in law by hearing and determining the application, while the court had no Jurisdiction to entertain it.

Submitting to the second ground of appeal that **the learned trial Magistrate erred in Law and fact by granting application while the court was *functus officio*;** it is the Appellants Counsel's apprehension that, the fact that on 18/06/2015 the court had already given its decision on the matter of how the proceedings of the instant case should be conducted, the committal court's hands were tied by the previous order and that it could not entertain the same matter again as it was ***functus officio***. In strengthening this point, the Appellant's Counsel reminded the court that even the trial Magistrate himself agreed that the same order was granted, as he appreciates it on page 13 of the ruling in issue, the order which is also well known by the Respondents. It is the Counsel's concern that the Respondents' prayer for the Court to vary or set aside order of the Court barring and prohibiting the media not cover and publish any matter in respect of proceedings in Preliminary Inquiry No. 29/2014 was unprocedural and illegal and thus it was an error for the committal Magistrate to give an order on the matter which was

already decided by the same Court, and further granted the order to set aside the already existing order.

Concluding his remarks for the second ground of appeal, it is the Counsel's concern that the Resident Magistrate's Court of Kisutu was *functus officio* and was unable to entertain the application filed because on 18/06/2015 the court issued the order which later on February, 2019 the Respondents reapplied for consideration for the same to be set aside. The case of ***KAMUNDU VS. REPUBLIC, [1973] E.A 540*** was tabled for supporting this point and held to the same is quoted as hereunder:

> *"...A Court becomes functus officio when it disposes of a case by a verdict of guilty or by passing sentence or making some orders finally disposing of the case..."*

From the above submission, it is the Counsel's prayer that the above grounds of appeal be allowed and that the initial order of the court be restored so as the committal proceedings proceed to another level.

Responding to the above submission, it is the Respondents Counsel's capitulation that, in respect of the ground concerning the committal court jurisdiction to entertain the hearing of the prayers before it and proceeding decide on the same, it is the Respondents Counsel's persuasion that the subordinate court / committal court had jurisdiction and powers

to entertain and grant the advisory order the way it did. In support of this position, Mr. Abubakar the learned Counsel also referred this court to the case of ***REPUBLIC VERSUS FARID HADI AHMED & 21 OTHERS, Criminal Appeal No. 59 of 2015***.

The Counsel revealed that, the powers to entertain the matter such as the one which was before the court, the committal court had such powers to entertain. In elaborating this point, the learned Counsel averred that, the reason as to why the Respondents had filed the application to set aside the previous order of the court to bar the media, was that the subordinate court had previously made that order without hearing the Respondents and without jurisdiction. Naming the error made in the course of proceedings before the subordinate court, the Respondents' Counsel also reminded the court that in the said Ruling, the Magistrate also reminded the Director of Public Prosecutions **(DPP)** to discharge his duties according to law and that he must avoid abuse of his powers.

Further, it is the Respondents Counsel's submission that, at the committal court, there are traditional, ordinary, necessary and residual powers of subordinate courts over the committal proceedings they preside. These powers include:

(a) The requirement to take full control of proceedings before it;

(b) The need to control or curb the abuse of the process of the court;

(c) Powers to refuse unnecessary adjournments and thereafter issue appropriate orders;

(d) The requirement of having fair conduct of the proceedings which are in the hands of the court;

(e) The need to take into account constitutional as well as statutory rights of the accused persons or parties to the proceedings before the court.

In the event therefore, it is the Counsel's submission that the committal court had jurisdiction to hear and determine **Miscellaneous Criminal Application No. 04 of 2019** before it.

Submitting further on the ground that the committal court was ***functus officio*** in setting aside the court's previous order on media apprehension, it is the Counsel's affirmation that the Director of Public Prosecutions is a statutory creature and his powers and limits are prescribed by law. He mentioned the limits of the powers of the Director of Public Prosecutions as those enshrined in the Constitution of the United Republic of Tanzania (1977) as amended; and other Laws such as The National Prosecutions Services Act, No. 27 of 2008 and The Criminal Procedure Act Cap. 20 [R.E 2002] (Before it was repealed by section 31 (d) of the National Prosecutions Service

Act, 2008 [Act No. 27 of 2008]; where its **limits include** Public interests; Interests of Justice; the need to do justice; and the need to prevent the abuse of legal process or misuse of procedures of dispensing justice.

It is further the Counsel for the Respondents submission thus, a subordinate court must see to it and be satisfied that it is competent to hold the committal proceedings in respect of accused persons before it; and that the committal duty is vested in the subordinate court and not in the High Court.

Further, referring to the order given on 18th June, 2015, the Respondents' Counsel is of the opinion that the same was a procedural order and an interlocutory order which was made under section 34 (3) and (4) of the Prevention of Terrorism Act, 2002 [Act No. 21 of 2002] which was made for the use by the trial court which is the High Court of Tanzania and not the Subordinate Court.

He mentioned the order given earlier by the committal court to be interlocutory order which it had chances to be set aside or varied because it was a procedural irregularity which it can be corrected as the same was given without jurisdiction, and that the correction of the procedural error could not affect the main committal proceedings. Further that the power to vary or set aside can be exercised at any time before the conclusion of the **Preliminary Inquiry No. 29 of 2014.** In support of

this position, the case of ***TAHER YUSUFALI VERSUS KYELA VALLEY FOOD LTD & ANOTHER, Civil Case No. 377 of 2002*** (High Court at Dar es Salaam) was cited.

In that regard and from the above explanation, it is the Respondents Counsel's opinion that, the subordinate court was not *functus officio* in entertaining and granting the prayer in **Miscellaneous Criminal Application No. 04 of 2019.**

In the event therefore, it is the Counsel's submission that the appeal at hand be dismissed for want of merits.

After prudently considering the submissions of the learned Counsel, as the matter of Jurisdiction is of utmost importance in any judicial proceedings, let me begin by quoting the verdict pronounced by the Court of Appeal of Tanzania in the case of ***FANUEL MANTIRI NG'UNDA VS. HERMAN M. NGUNDA & OTHERS,*** **Civil Appeal No. 8 of 1995,** where the Court observed that:

> ***"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the Court to adjudicate upon cases of different nature.....***
>
> ***....The question of jurisdiction is so fundamental that Courts must as matter of practice on the face of it be certain and assured of their jurisdiction position at the commencement of the trial....***

....It is risk and unsafe for the Court to proceed on the assumption that the Court has jurisdiction to adjudicate upon the case."

Within the spirit of the above principles, of course I understand that before any matter is determined on merits, the Court must first be certain that the Court has jurisdiction to hear and determine the matter.

I am also alive that the question of jurisdiction is not merely one of form; it is fundamental. Any trial conducted by a Court with no jurisdiction to try the same will be declared a nullity on appeal or in revision.

Before I start considering the merits or otherwise of the grounds of appeal, I am of the view that it is important at this stage to restate portions of facts presented to the Court, portions which are not in dispute.

First, before the Resident Magistrate's Court of Dar es Salaam at Kisutu there is pending committal proceedings in respect of the Respondents' charges in via **PI No. 29 of 2014;**

Second, that in the course of those proceedings, on 18th June, 2015 the court assigned out an order which barred the publication of proceedings in respect of **PI No. 29 of 2014**;

Third, on 5th September, 2019 M. S. Kasonde, Honorable Magistrate vacated the court order made on 18th June, 2015

which barred the publication of proceedings in respect of **PI No. 29 of 2014**;

Fourth, that, out of the decision by Hon. Kasonde, the Republic is now before the court pleading that the said decision cannot stand, as the court was *functus officio* in deciding that application;

Fifth, that together with the above matter, the Republic is now challenging the powers that the committal court vested into it in determining the matters before it being ordering the completion of investigation within the prescribed period and setting aside the order of the court dated 18th June 2015 by Hon. Kasonde.

In addition to the foregoing, one has to be mindful that, the nature of the offences of which the Respondents herein are to be committed are all contrary to the provisions in the **Prevention of Terrorism Act No. 21/2002.**

The above said, let me now turn to the merits of the grounds of Appeal.

As said earlier, the two grounds of appeal emanates from the decision of the committal court at Kisutu mainly on the orders from the Ruling of the Kisutu RM's Court in **Criminal Application No. 4/2019** in Original **Preliminary Inquiry Case No. 29 of 2014**.

I have to confess that, in the cause of determining this matter apart from reading in detail the learned Counsel submissions for and against the grounds of appeal, I had also an opportunity of going through the record of the court in respect of this matter and different decisions that have been delivered in different applications and appeals from the time of its institution of this matter to this stage.

As I have said earlier that the matter of jurisdiction in any case is paramount, then I will start with the ground of jurisdiction to the effect that: **the learned trial Magistrate erred in law by allowing the application, while the court had no Jurisdiction to entertain it.** As this matter has set its own precedents, and since the issue of jurisdiction in this matter does not arise for the first time, I have to confess that I had an opportunity of going through the Court of Appeal's decision in the very own Judgment in the case of ***REPUBLIC VS. FARID HADI AHMED AND 21 OTHERS, Criminal Appeal No. 59 of 2015, Court of Appeal of Tanzania*** *(Unreported)* where the same powers of the committal court was an issue before the Court of Appeal. After a long discussion of the powers thereto, the highest Court of the Land held that:

> ***"...In that vein, we hold the view that those matters which were raised before the RM's Court***

on 03/09/2014 were legal matters to which the RM's Court had no jurisdiction to decide. Those matters ought to have been reserved with a view of raising them in the High Court upon being committed to that court for trial.

.....In our view however, the power of Magistrates under section 129 of this Act are confined to offences triable by the subordinate court because it does not fall under the provisions governing committal proceedings. Thus, we are convinced that it was improper for the High Court Judge to interpret those powers as extending to committal proceedings, because as already stated, matters of committal are covered elsewhere.

.....Consequently, we agree with Mr. Ndjike that the High Court Judge erred in holding that the RM's Court had jurisdiction to deliberate and decided on those matters on the basis of the power enacted under this section.

.....For reasons we have assigned, we find and hold that the subordinate court Magistrate had no jurisdiction to deliberate and decide the matters which were raised before it by the Respondents' Advocates. Therefore, the appeal has merit and we

allow it. Consequently, we quash the decision of the High Court, and direct the RM's Court to proceed with the case from where it ended before the institution of the application for revision in the High Court."

Above is the Court of Appeal's position on the matter of Jurisdiction in regard of the committal court.

Further to that, I had also an opportunity to go through the provisions in the **Criminal Procedure Act, Cap. 20 [R.E. 2002] particularly section 186 (1) (a) (b) and (c) and section 188** respectively**.** For ease of reference let me quote the same as herein below:

186.-(1) *The place in which any court is held for the purpose of inquiring into or trying any offence shall unless the contrary is expressly provided in any written law, be deemed an open court to which the public generally may have access so far as the same can conveniently contain them,* ***save that the presiding judge or magistrate may, if he considers it necessary or expedient-***

(a) in interlocutory proceedings; or

(b) in circumstances where publicity would be prejudicial to the interest of-

(i) ***justice, defence, public safety, public order or public morality;***

(ii) ***the welfare of persons under the age of eighteen years or the protection of private lives of persons concerned in the proceedings,***

(c) Order at any stage of the inquiry into or trial of any particular case that persons generally or any particular person other than the parties thereto or their legal representative shall not have access to or be or remain in the room or building used by the court.

188. The court may prohibit the publication of names or identities of parties or of witnesses for the furtherance of or in the interests of the administration of justice."

From the contents of the above sections, I find that the Judge or Magistrate as the case may be regardless the powers of the court as mentioned earlier especially in the committal court, have the above **interlocutory powers** over the conduct of the court proceedings for the matter before him/her. These powers are obvious as they seem not to offend neither party. Example, the order to prohibit the publication of names or identities of parties or of witnesses for the furtherance of or in the interests of the administration of justice can be of substance and be in the benefit of parties or

witnesses in the sensitive proceedings such as the one before us. I say so since even in the proceedings such as the one in **PI No. 29 of 2014,** the previous order to ban the media can be the order that is of benefit to the parties and their respective witnesses at that particular time of proceedings. I see such order of importance and it is harmless regardless of some other perceptions, but to me, still the **privacy and human dignity of accused persons of terrorist acts and their families, is of the paramount importance until proven guilty.**

The reason I have demonstrated the above explanation, and it is the spirit of the above sections that not all the committal court's powers are prohibited by law in the cause of conducting the court proceedings. This is the reason why the previous order to ban the media in my opinion had no any legal effect to be argued to as it was in a first place the important order in conducting sensitive committal proceedings.

At this juncture, and in the spirit of the above sections **186 (1) (a), (b) and (c) and 188** of the **Criminal Procedure Act, I urge all parties and their respective Advocates to look at the Court's previous order positively as the same is inoffensive, and further procedural than substantive. It does not confer any right upon litigants nor does it bestow any extra and**

legal power on the Court. It merely regulates the conduct of the business of the Court given by the Magistrate in this case as the Manager of the court's proceedings.

It is from the above explanation, the order by the court to ban the media does not bring into question the jurisdiction of the Court to hear and determine the situation at hand in conducting the proceedings at the court peacefully, and in a harmonized, civilized and preserved manner before it for the benefit of all parties in these sensitive proceedings. Finally under the circumstances, it is my considered and firm view that the previous interlocutory order under the law as seen in the Criminal Procedure Act, **not fatal**.

My above reasoning is also supported by the Respondents' Counsel in his respective submission in replying to the grounds of Appeal (see page 3) when he is of the view that:

"..... at the committal court, there are traditional, ordinary, necessary and residual powers of subordinate courts over the committal proceedings they preside. These powers include:

(a) The requirement to take full control of proceedings before it; and

(d) The requirement of having fair conduct of

the proceedings which are in the hands of the court."

Back to the ground of appeal on the **jurisdiction** of the committal court in respect of **Criminal Application No. 4/2019,** particularly for the Magistrate's powers to order investigation to come to an end within a specified period and further to depart from the previous order for court's proceedings conduct, as the same are legal matters to be determined. It is my concern that, the proper decision on the jurisdiction matter over these issues under the given situation is to abide to the Court of Appeal of Tanzania position in the case of ***REPUBLIC VS. FARID HADI AHMED AND 21 OTHERS, Criminal Appeal No. 59 of 2015, Court of Appeal of Tanzania (Unreported) in page 13*** which says that ***"...the role of the subordinate court is very minimal, whose power has become to only read or cause to be read to the accused the statements of the witnesses after which the accused is committed to the High Court for trial. This is all what section 246 (1) and (2) of the CPA is all about."***

In this case therefore, and to determine the ground of appeal on committal court jurisdiction, the learned Magistrate in the subordinate court did not have powers to order the prosecution to close / finalize the committal proceedings within

a month, or within any other time for that matter, and set aside the legal interlocutory order of the court in conducting its proceedings as seen in sections **186 (1) (a), (b) and (c) and 188** of the **Criminal Procedure Act.** That was not within his / her powers.

From the above explanation, **I find the instant ground worth with merits.**

On the second ground of appeal that ***the leaned trial Magistrate erred in law and fact by granting the application while the court was functus officio;*** it is my firm decision that the successor Magistrate **did not have jurisdiction to vacate the earlier order against press coverage of the case made by his predecessor**, as the court was indeed ***functus officio.*** It is further my observation that, if the accused persons / Respondents herein wanted such an order, their only recourse would have been to prefer an **Appeal** or **Revision** in the High Court to have the previous Order set aside.

I would like to strengthen my above position by referring to the case of ***MOHAMED ENTERPRISES (T) LTD V. MASOUD MOHAMED NASSER, Court of Appeal of Tanzania at Dar es Salaam, Civil Application No. 33 of 2012.*** In this case it was stated that:

"We must state at this stage that we do agree with both counsel that Cap. 33 has no provision which provides for setting aside a decree that is being challenged. We would like, however, to note with considerable apprehension, as to what would be the appropriate procedure to be adopted. We do so bearing in mind that there should be no room open to the High Court and Courts subordinate thereto whereby one judge would enter judgment and draw up a decree in one case (thus bring such a case to a finality) only to find another judge of the High Court soon thereafter setting aside the said judgment and decree and substituting therefor with a contrary judgment and decree in a subsequent application. ***To do so in our considered opinion amounts to a gross abuse of the court process. Such abuse should not be allowed to win ground in this jurisdiction. "***

I am aware that the above case is a bit distinct with the one at hand in the sense that the matter at hand has not reached into finality by decree or drawn order, but the mere fact that there was already before the court **the valid and legal order by the Magistrate of the same court, then, it was improper for another Magistrate from the very same court and hierarchy to set aside his colleague's order. So the principle of *Functus Officio* stands.**

In the very same case of ***MOHAMED ENTERPRISES (Supra),*** the Court proceeded to rule out that:

> ***"Although there is no statutory law (to the best of our knowledge) which bars one judge from setting aside a decision of a fellow judge of competent jurisdiction, rules of practice, prudence and professional conduct impose such restrictions.*** *A judge of the High Court in our jurisdiction is or should know and respect that code of conduct. Failure to do so is to open up a pandemonium of unprofessionalism, hitherto unknown in this jurisdiction. The procedure adopted by FGH, J. therefore, is very much* ***detested****. We hope that the High Court leadership will see to it that it never happens again, in the interest of our judicial system."*

From the above precedent and explanation, in all fours, **it was therefore wrong for the Magistrate to revisit his colleague's earlier order and vacate it, thus court was *functus officio*.** That should rest the matter; from the same I proceed to declare that this **ground has merits.**

Finally, on the reasons I have given above, **I hereby allow the Appeal.**

Consequently, the decision and all orders emanated from **Criminal Application No. 04 of 2019 in Original PI. Case No. 29/2014 before Hon. M. S. Kasonde, RM at the**

Resident Magistrate's Court of Dar es Salaam at Kisutu are hereby quashed and set aside. I proceed to uphold the Order dated 18th June 2015 which prohibits the media to cover and publish any matter in respect of proceedings in **Preliminary Inquiry No. 29/2014** pending at Kisutu RM's Court.

It is so ordered.

Right of Appeal Explained.

L. E. MGONYA
JUDGE
29/05/2020

COURT: Judgment delivered in the presence of Ms. Faraja George, State Attorney for the Appellant, Mr. Abubakar Salim, Advocate for the Respondents and Ms. Veronica RMA, this 29th day of May, 2020.

L. E. MGONYA
JUDGE
29/5/2020