

**IN THE HIGH COURT OF TANZANIA**

**TABORA DISTRICT REGISTRY**

**AT TABORA**

**DC. CRIMINAL APPEAL NO. 110 OF 2019.**

[Originating from Criminal Case No. 161 of 2017 at the  
District Court of Tabora]

**BETWEEN**

**LISU JAMES.....APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

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**JUDGMENT**  
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Date of Last Order: 09/07/2021

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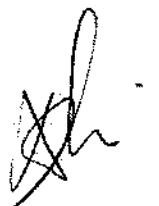
**AMOUR S. KHAMIS, J.**

Lisu James (the Appellant herein) has appealed to this Court against conviction; and sentence of 30 years passed by the District Court of Tabora in criminal case No. 161/2017 where he was charged with an offence of Armed Robbery contrary to Section 287 of the Penal Code Cap. 16 R.E 2002.

The Appellant filed a Petition of Appeal which contains eight grounds of appeal. They are as follows: -

1. *That, the conviction entered by the trial court is not known to law since the provision of section 2817 A of the Penal Code Cap. 16 R.E 2002 under which the appellant was convicted does not exist in the Penal Code.*

2. That, the appellant was denied a fair trial as at the beginning of the trial, the appellant was not arraigned in that, the trial court did not read the charge to the appellant and take his plea before it commenced to receive the evidence of the prosecution. See **Naoche Ole Mbile vs. Republic [1993] TLR 213.**
3. That, there was no fair trial in that the hearing of the proceedings at the trial court proceeded before two trial magistrates namely Hon. E. Ngigwana – RM and Hon. A.T. Millanzi – RM without stating the reason for the change of magistrate. See **Shaban Seif & Another vs. Republic, Criminal Appeal No. 215 OF 2015**, CAT at Dar es Salaam (unreported).
4. That, without prejudice to the grounds of appeal above, there is an irregularity in the proceedings of the trial court which is sufficient to nullify the trial of the appellant in that although the appellant gave his defence on oath, his rights on the options available to him on how give his defence was not explained to him by the trial court in order to come to terms with section 231(1) of the Criminal Procedure Act Cap 20 R.E 2002. See **Salumu Nasooro vs. Republic, Criminal Appeal NO. 234 OF 2009** CAT (unreported).
5. That, the doctrine of recent possession against the appellant was wrongly invoked since the alleged owner (PW2) of the stolen motorcycle (exhibit P3) did not take part in the identification of the same in court and confirm that the motorcycle subject of the charge is his property. See **Godfrey Joseph vs. Republic Criminal Appeal No. 11 OF 2010** CAT (unreported).



6. *That, the link in the case between the motorcycle allegedly found in possession of the appellant and that tendered in court (exhibit P3) is very much wanting since the seizing team who seized the same would identify the motorcycle in court as the one they seized from the appellant to cement the case for the prosecution.*
7. *That, the trial magistrate erred when he relied on the identification evidence by PW1 (the victim) who did not give a physical description of the appellant but only he mentioned the clothes allegedly worn by the appellant at the scene of crime.*
8. *That, the stolen motorcycle (exhibit P3) subject of the charge was not satisfactorily described in the charge sheet as its chassis number and engine number were not particularized in the particulars of the offence, thus vitiated or undermined the linkage in the case between the stolen motorcycle (exhibit P3) and the registration card (exhibit P2) which also bears the no identification of PW2 who claimed to be the owner of the same.*

When the appeal came for hearing, the appellant was present in person and the respondent was represented by the late Tumaini Pius, State Attorney. The appellant requested to respond after the State Attorney submitted.

The State Attorney submitted that after reviewing the records of appeal, the Republic supported the third ground of appeal, that the case was heard by two magistrates and no reasons were stated for a change of magistrates contrary to **Section 214 of the Criminal Procedure Act, Cap 20 R.E 2002.**



He cemented that the Republic's case was heard by Hon. Ngigwana and the defence case was heard by Hon. Millanzi who did not disclose as to why the previous magistrate did not finalise the case.

The learned State Attorney, referred the case of ***Said Sui vs. Republic Criminal Appeal No. 266 OF 2015***, where the Court of Appeal sitting at Dodoma stated that, if no reason is given for change of magistrate, the subsequent magistrate does not have the jurisdiction to try the case.

The Court insisted that, failure to disclose such reasons as the effect of nullification of a part of proceedings that held by the magistrate who did not have the authority to preside over the case.

The State Attorney, thus, argued that, the entire proceedings that took place before Hon. Milanzi, RM be nullified.

He therefore prayed that the case file be remitted to the trial court after nullification of Milanzi, RM's proceedings and decisions with directions that the first magistrate continues to take over the case; and if he is not the station, then a new magistrate must assign reasons for change of magistrates.

The Appellant has no useful arguments on this ground raised by himself.

It appears, decided to change the gear on air, he prayed for the court to proceed with the appeal because the mistakes were done by the court itself and not by him.

The Appellant contended further that, he trusted both magistrates who presumed to have been conversant with the procedures, therefore, he was on the opinion that, it is not just to penalise him for their mistakes.

Cursory glance of the record of appeal, it's clear that the Appellant case before the trial Court was heard by two magistrates namely, Hon. Ngigwana and Hon. Millanzi.

The former heard the prosecution case and the later heard defence and composed judgment.

Neither of them assigned reason(s) for transfer of the case from Hon. Ngigwana to Hon. Millanzi. As such, the later magistrate lacks jurisdiction to conduct of the trial.

The above state of affairs is not a first time happening in cause of administering justice. They happen severally. As such Court of appeal has given a direction, which is to nullify subsequent proceedings of the magistrates who lacks jurisdiction for failure to assign reasons for reassignment.

The Court of Appeal fortified its view by invoking **Section 214(1) of the Criminal Procedure Act, [Cap 20 RE 2002]**.

The Court of Appeal position is on the view that courtesy demands that in case there is a change of magistrate conducting a case, the public should be informed of such a change. This will do away with unnecessary negative thoughts.

The succeeding magistrate should also indicate, whether or not he considers to act on the evidence or proceedings recorded by his predecessor and tell the parties/ accused the right to re-summon the witnesses and recommence the trial.

The purpose of the section is to make sure that the accused is not materially prejudiced.

Court of Appeals' decisions underscore the above point. In the cases of **Salim Hussein vs. Republic**, Criminal Appeal No. 3 of 2011, Court Of Appeal, sitting at Tanga; **Abdi Masoud @ Iboma &**





**3 Others, Versus Republic**, Criminal Appeal No. 166 of 2015, Court of Appeal Dodoma, and **Adam Kitundu vs. Rep**, Criminal Appeal No. 360 2014 Court of Appeal sitting at Dodoma (all unreported) the said position was echoed.

In the case of **Abdi Masoud @ Iboma & 3 Others, Versus Republic**, (supra), borrowing a leaf in the case of **Priscus Kimaro vs. Rep**, Criminal Appeal No. 301 of 2013 (unreported).

The Court of Appeal had an occasion to comment on a similar situation and directed that: -

*“... where it is necessary to reassign a partly heard matter to another magistrate, **the reason for the failure of the first magistrate to complete must be recorded. If that is not done, it may lead to chaos in the administration of justice.** Anyone, for personal reasons could just pick up any file and deal with it to the detriment of justice. This must not be allowed.”*

The above statement was echoed in a case of **Marwa Michael vs. Rep**, Criminal Appeal no. 120 of 2014.

Again on the same subject, the Court of Appeal entirely subscribed observation made in **Priscus Kimaro vs. Rep**. (supra) by holding that:-

*“In our view, under section 214 (1) of the CPA it is necessary to record the reasons for reassignment or change of trial magistrates. It is a requirement of the law and has to be complied with. It is a prerequisite for the second magistrate’s assumption of jurisdiction. If this is not complied with, the successor magistrate would have no authority or jurisdiction to try the case. Since there is no reason on record in this case as to why the predecessor trial*

*magistrate was unable to complete the trial, the proceedings of the successor magistrate were conducted without jurisdiction, hence a nullity. We therefore agree with Ms. Shio that the irregularity was incurable and have to be quashed.”*

The above decision delivered on 25<sup>th</sup> May 2015, was followed by another decision made on 1<sup>st</sup> June, 2015. It was the case of **Adam Kitundu vs. Rep**, Criminal Appeal No. 360 2014 Court of Appeal, Dodoma which has the same view by holding as follows: -

*“But as Ms. Nsana, has correctly submitted, what was done in the present case was contrary to section 214 (1) of the CPA. In a recent decision of this Court, in this same session, of **Abdi Masoud Iboma And 3 Others V. R.** Criminal Appeal No. 116 of 2015 (unreported) we held that, that provision requires that reasons be laid bare to show why the predecessor magistrate could not complete the trial. In the absence of any such reasons, the successor magistrate lacked authority and jurisdiction to proceed with the trial and consequently all such proceedings before him were a nullity. Similarly, in the present case no reasons are on record, as to why the predecessor magistrate could not complete the trial. So, all the proceedings and judgment before Tengwa, RM are vitiated. As night follows the day, the subsequent proceedings before the first appellate court, are void.”*

Basing on the above observation and decisions cited herein above, I find as hereby do, that Hon. Millanzi acted without jurisdiction to adjudicate the appellant’s trial.



As night follows the day, even the proceeding and judgment of the District Court of Tabora conducted by Hon. Millanzi was nullity for being hinged in a vacuum.

Further, I order that, the case file be returned to the District Court of Tabora for continuation of hearing.

If Hon. Ngigwana is unable to continue with trial, the successor magistrate must pay due regard to **Section 214 (1) of the Criminal Procedure Act** while hearing the case. It is so ordered.

Dated at Tabora this 13<sup>th</sup> day of August 2021.



**AMOUR S. KHAMIS**

**JUDGE**

**13/8/2021**

**ORDER:**

Judgment delivered in open Court in presence of Mr. Miraji Kajiru, Senior State Attorney for the Republic and the appellant in person. Right of Appeal explained.



**AMOUR S. KHAMIS**

**JUDGE**

**13/8/2021**