

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA.

**CONSOLIDATED CRIMINAL APPEALS NO. 149, 150, 151, 152 &
153 OF 2019**

*[Arising from the decision of District Court of Manyoni at Manyoni in Economic Case
No. 81 of 2017 Hon. S.T. Kiama, RM]*

MWANTUI OMARY @ KISOFIA 1ST APPELLANT

ATHUMANI RAMADHANI

MKOMA @ KIGUGUMIZI 2ND APPELLANT

SEIF JUMANNE SEIF 3RD APPELLANT

SAMWEL DANIEL @ KEFASI 4TH APPELLANT

JUMANNE EMMANUEL @ MAVUNDE 5TH APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

20th April, 2021 & 17th August, 2021.

M.M. SIYANI, J.

At the District Court of Manyoni, Mwantui Omary @ Kisofia, Athumani Ramadhani Mkoma @ Kigugumizi, Seif Jumanne Seif, Samwel Daniel @ Kefasi and Jumanne Emmanuel @ Mavunde were arraigned for Unlawful Possession of Government trophy and Unlawful dealing with the same

contrary to sections 86 (1) (2), (c) (ii) (3) (b) and 80 (1), 84 (1) (a), 111 (1) (a) and 113 (1) (2) of the Wildlife Conservation Act No. 5 of 2009 as amended by section 59 (a) and (b) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016, read together with paragraph 14 of the First Schedule to and section 57 (1) and 60 (2) of the Economic and Organized Control Act, Cap 200 RE 2002 again as amended by section 13 (b) (2) (3) (4) and 16 (a) of the Written Laws (Miscellaneous Amendments) Act (No. 3) of 2016 respectively.

During the trial the prosecution led evidence which indicates that the appellants were arrested on 28th August, 2016 at Mtakuja which is a village located in Manyoni District, Singida Region for what was said to be breach of peace. Following such arrest, they were searched and found with two pieces of elephant tusks and when interrogated, they confessed to have been in such possession unlawfully. At the end of the trial, the appellants were convicted and a term of twenty years imprisonment for each of the two counts, was meted against them.

Aggrieved by both the conviction and sentence, each of the appellants preferred a separate appeal to this court. While Criminal Appeal No. 149 of 2019 was lodged by Mwantui Omary @ Kisofia (the first appellant),

Criminal Appeals No. 150 of 2019, 151 of 2019, 152 of 2019 and 153 of 2019 were lodged by Athumani Ramadhani Mkoma @ Kigugumizi (the second appellant), Seif Jumanne Seif (the third appellant), Samwel Daniel @ Kefasi (the fourth appellant) and Jumanne Emmanuel @ Mavunde (the fifth appellant) respectively. For convenience however, an order was issued by this court on 15th April, 2021 to consolidate hearing of the five appeals above. Save for a petition by the second appellant herein which contained six grounds of complaints, the remaining petitions of appeals contained three similar grounds which for reason that will be known shortly, I will not reproduced its contents in this ruling.

On 20th April, 2021 I heard the appeal in respect of the grounds presented and set the matter for judgment which was to be delivered on 2nd June, 2021. However, in the course of composing the judgment, I noted that Economic Case No. 81 of 2017 a case which is a subject of this appeal, was presided by two different magistrates. The record shows while I. M. Minde, SRM, recorded the testimony of PW1 on 18th May, 2018 and part of PW2 on 28th May 2018, S. T. Kiama, RM presided and recorded the remaining part of PW2's testimony on 12th July, 2018.

She also presided over the proceedings and recorded evidence in respect of PW3, PW4, PW5, PW6, PW7, PW8 and the defense case.

The record however, was silence as to the reasons for such change of magistrates from I. M. Minde, SRM to S.T. Kiama, RM. Being aware that, failure to give reasons for transfer of a case from one presiding magistrate to another as required under section 214 (1) of the Criminal Procedure Act Cap 20 RE 2019, is a fatal procedural irregularity, I found it prudent to invite parties to address the court on that issue and they did so on 16th August, 2021.

Addressing the court, Ms Phoibe Magili, the learned State Attorney, who appeared for the Respondent/Republic quickly conceded on the failure by the trial court to assign reasons for takeover of the proceedings between the two magistrates. The learned State Attorney argued that it was a mandatory requirement of law under section 214 (1) of the Criminal Procedure Act (supra) for the court to state reasons as to why the former magistrate could not complete the trial. Taking a leaf from the court of Appeal of Tanzania decision in **Kalasa Lugoye Kalasa @ Msukuma Vs Republic**, Criminal Appeal No. 111 of 2019 (unreported), Ms Magili argued that, failure to state reasons for transfer of a case from

one presiding officer to another, is a fatal procedural irregularity which renders the proceedings after take over, a nullity for want of jurisdiction. In her opinion therefore, the available remedy where no reasons for transfer of case from one presiding magistrate to another has been given, is to order retrial of the case and urged the court to do so. Presumably owing the technicality nature of the issue raised, the appellants on the other hand had nothing substantial to state.

As prior indicated and having heard the arguments by the learned State Attorney, no reasons were indicated as to why I. M. Minde, SRM who was the first presiding Magistrate, could not continue with the case to its finality as required by section 214 (1) of the Criminal Procedure Act (supra). In my considered opinion, compliance to section 214 (1) above, gives a magistrate who takes over the proceedings, mandate to preside the same and likewise, failure to do so denies such magistrate, the prerequisite mandate.

As correctly stated by Ms Magili, it is therefore apparently that, failure to assign reasons for taking over of a case, is a fatal procedural irregularity which renders the proceedings thereof a nullity. I am fortified in this stance by the findings of the Court of Appeal of Tanzania in several

decisions. I will start with the case of **Abdi Masoud Iboma and 3 Others Vs Republic**, Criminal Appeal No. 116 of 2015 (unreported) where the court observed following:

It is a prerequisite for the second magistrate's assumption of jurisdiction. If it is not complied with, the successor magistrate would have no authority or jurisdiction to try the case since there is no reason on record as to why the predecessor magistrate was unable to complete the trial, the proceedings of the successor magistrate were conducted without jurisdiction, hence a nullity. [Underlined emphasis supplied]

The same conclusion was also reached in the case of **Hatwib Salim Vs Republic**, Criminal Appeal No. 372 of 2016 (unreported) where the Court reiterated the essence of complying with the provisions of section 214 (1) of the Criminal Procedure Act by stated the following:

The requirement to state reasons of change of magistrates from one magistrate to another is a very important issue to be considered. This is for the reason of controlling and avoiding the danger of some mischievous persons who might be able

to access the file and do issues not in accordance with the procedure or requirements of the law.

Lastly, the Court of Appeal of Tanzania also underlined the essence of complying with section 214 (1) of the Criminal Procedure Act in the case of **James Maro Mahende Vs Republic**, Criminal Appeal No. 83 of 2016 by observing the following:

The requirement of giving reason by the successor magistrate is necessary in order to provide semblance of order and to ensure that the accused person gets a fair trial. Apart from the fact that it is a requirement under the law, it is also good practice for the sake of transparency. The accused person has a right to know why there is a new presiding magistrate. In order for the accused person to have a fair trial, he has a right to know any changes relating to the conduct of his case.

I am bound to follow the above authorities from the apex court of the land. Since in the case which is a subject of the instant appeal, no reasons were assigned when the second magistrate took over the

proceedings from the first magistrate, the proceedings recorded by the second magistrate, were conducted without jurisdiction and the same were a nullity which this Court cannot either uphold or dismiss through an appeal.

For the foregoing reasons, I invoke revision powers conferred to this court under section 373 (1) (a) of the Criminal Procedure Act Cap 20 RE 2019 by quashing the proceedings recorded by S. T. Kiama, RM, from 12th July, 2018 when the second prosecution's witness gave his testimony, to 24th July, 2019 when the defence case was closed and set aside the judgment and sentence imposed by the District Court of Manyoni in Economic Case No. 81 of 2017. It is hereby ordered that, the case file to be returned to the District Court of Manyoni before I. M. Minde, SRM to continue with the trial from where she ended on 28th May 2018, then compose and delivering the judgment as soon as possible. If for reasons to be recorded I. M. Minde, SRM is unable to continue with the trial, compose and deliver the judgment, the successor magistrate must pay due regard to the dictates of section 214 (1) of the Criminal Procedure Act and should the new trial lead to a conviction, the time the appellants have spent in prison serving the current sentence, should be taken into account when passing the sentence. I further order that the

appellants be remanded in custody pending their trial unless bail is granted by a competent court. It is so ordered

DATED at **DODOMA** this 17th day of August, 2021.



M.M. SIYANI
JUDGE