

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

PC CRIMINAL APPEAL No. 16 OF 2020

*(Arising from the District Court of Bukoba at Bukoba in Criminal Application No. 39 of 2019 &
Original from Bukoba Urban Primary Court in Criminal Case No. 860 of 2019)*

BENEZETH MARTIN ----- APPELLANT

Versus

APOLONIA MBAGALA ----- RESPONDENT

JUDGMENT

03.06.2021 & 03.06.2021

Mtulya, J.:

Mr. Benezeth Martin (the Appellant) was prosecuted by his sister, Mama Apolonia Mbagala (the Respondent) at the **Primary Court of Bukoba at Bukoba** (the primary court) in **Criminal Case No. 860 of 2019** (the case) for an assault occasioning actual bodily harm contrary to section 241 of the **Penal Code** [Cap. 16 R.E 2019] (the Code).

Before hearing of the case, the Appellant decided to invite Mr. Lameck John Erasto, learned counsel, to represent him in the case. As advocates are not allowed to appear in primary courts, as per section 33 (1) of the **Magistrates' Court Act** [Cap. 11 R.E. 2019] (the

Magistrates' Court Act) and section 310 of the **Criminal Procedure Act** [Cap. 20 R.E 2019] (the Criminal Procedure Act), Mr. Erasto decided to file an application at the **District Court of Bukoba at Bukoba** (the district court) in **Misc. Criminal Application No. 39 of 2019** (the Application) praying for transfer of the case from the primary court to district court so that the Appellant can be afforded the right to legal representation as part of the fair hearing.

The Application was turned down by the district court hence this appeal which was registered by the Appellant in this court in **PC Criminal Appeal No. 16 of 2020** (the appeal) claiming that two (2) of his constitutional and human rights matters have been violated by the district court in refusing the transfer of his case from the primary court to the district court. Reading the petition of appeal and the submission of the Appellant who appeared in person without any legal representation in this court, the following rights are depicted, *viz*: first, constitutional rights to fair hearing and second, human right to enjoy legal representation.

Today morning when the parties were called for hearing, they both had brief submissions to register. According to the Appellant the district court failed to consider treatment he received from the

primary court during the application and granting of bail pending trial and during prayers to have proceedings for further steps in district court and finally conduct of the learned magistrate which created a lot of doubts in justice delivery. In replying the appeal, the Respondent submitted that it is a matter of evidence not the court which decides rights of individual persons and hence she did not protest the appeal arguing that the Appellant is employing delaying tactics in resolving the dispute.

I have gone through the record of this appeal and submissions registered by the parties. It is fortunate that both parties are in agreement that it is not the court which decides rights of the individuals in cases, but evidences registered to substantiate allegations. They also both agreed that to have confidence in our courts, their case may be transferred to the district court. I understand this court, and any other courts in our judicial hierarchy, are courts of justice, not courts of law as such.

I also understand that there are precedents of this court which state that invitation of legal services of learned advocates, in absence of any other qualification or explanation, is not a good cause of transferring cases from primary courts to district courts (see:

Aboubakar Mohamed Mlenda v. Juma Mfaume [1989] TLR 145;
Ashura M. Masod v. Salim Ahmad, PC Civil Appeal No. 213 of 2004;
Sprian Augustine v. Estadius Mushobozi, PC Criminal Appeal No. 2
of 2017 and **Lulu Richard Msofe v. John Christopher Mzava**, PC
Criminal Appeal No. 11 of 2018).



However, in circumstances where there are claims of challenges vividly displayed by our lower courts, this court may qualify those circumstances as good explanations in granting leave for transfer of cases from primary courts to district courts in search of justice, confidence and trust in our stakeholders. I think, that is the spirit in the provisions of sections 47 (1) (c) (i) and 63 (1) of the Magistrates' Court Act and precedents in **Aboubakar Mohamed Mlenda v. Juma Mfaume** (supra) and **Sprian Augustine v. Estadius Mushobozi** (supra).

Apart from registration of the explanation in the present appeal, there are also allegations of infringement of the constitutional right to fair hearing as provided under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and human right in legal representation as interpreted by our superior court in **Agness Simbambili Gabba v. David Simbambili Gabba**, Civil

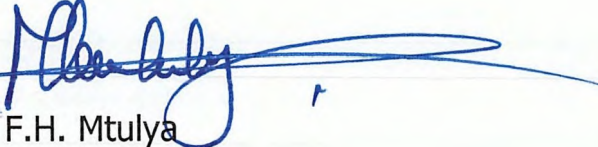
Appeal No. 26 of 2008, and this court in **Haruna Said v. Republic** [1991] TLR 124, hence this court sees merit in this appeal. In order to cherish the cited rights and build confidence and trust in our stakeholders who are in search of justice in our courts, this court sees no reasons why it should not transfer the case from the primary court to the district court.

Having said so and considering the parties will have confidence and trust in our courts when their case is heard and determined at the district court, I have decided to allow the appeal and order transfer of the case from the primary court to district court.

It is so ordered.


F.H. Mtulya
Judge
03.06.2021


This Judgment was delivered under the seal of this court in presence of the Appellant, Mr. Benezeth Martin and in the presence of the Respondent Mama Apolonia Mbagala.


F.H. Mtulya
Judge
03.06.2021
