

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA**

CRIMINAL REVISION NO. 3 OF 2022

(Original from the Court of Resident Magistrate of Mbeya, at Mbeya in
Criminal Case No. 15 of 2022)

THE REPUBLIC.....APPLICANT

VERSUS

- 1. AZIZ MOHAMED MSAGHAA.....1ST RESPONDENT**
2. MHINA EMMANUEL MMASA.....2ND RESPONDENT

REASONS FOR THE ORDER

Date of last Order: 04.08.2022

Date of Reasons: 26.08.2022

Ebrahim, J.

This is a criminal revision initiated by the Court following the complaint letter lodged in this court by the office of Public Prosecution through a letter dated 30.06.2022. The complaint originated in Criminal Case No. 15 of 2022 in the Court of Resident Magistrates of Mbeya, at Mbeya (the Trial Court). In that case parties are the Republic versus Azizi Mohamed Msaghaa and Mhina Emmanuel Mmasa (as 1st and 2nd accused respectively).

In this revision therefore, the Republic is titled as the Applicant due to her complaint and the accused persons are titled as the 1st and 2nd Respondents respectively. In essence the Republic complained of the order of the trial court, (Hon. Scout, Resident Magistrate) dated 29.06.2022. In the said order the trial court ordered the return of an exhibit to the owner (the 2nd respondent) when the case was still in progress.

After hearing the parties and considered the circumstance of the case, I granted the application by revising, quashing and setting aside the order made by the trial Resident Magistrate. I further ordered exhibit P2 to continue to be under the custody of immigration office until the finalization of the matter. I reserved the reasons which I am now delivering.

In order to capture the basis of the complaint, it is necessary to give a short account of the matter which goes as follows: Before the trial court, **Azizi Mohamed Msaghaa** and **Mhina Emmanuel Mmasa** are charged with the offence of facilitating in the smuggling of illegal immigrants into the United Republic of Tanzania contrary to **section 46 (1) (e) and (2) of the Immigration Act, Cap. 54 R.E. 2016.**

It was alleged that on the 1st day of March, 2022 at Mabadaga Primary School, within the District of Mbarali in Mbeya Region, the two accused persons were found facilitating the smuggling of illegal immigrants by guarding the motor vehicle make MITSUBISH CANTER with registration number T. 118 DSN which was carrying 16 Ethiopian nationals and 8 Somalia nationals who were found present in the United Republic of Tanzania without authorization from the Commission General of Immigration.

When the accused persons were arraigned to the trial court and the charge read over to them, both pleaded not guilty. The case went into trial. The prosecution began calling their witnesses. Their 2nd witness tendered a motor vehicle (i.e MITSUBISH CANTER Reg. No. T 118 DSN) as an exhibit and the same was admitted and marked **Exhibit P2**. When the 2nd witness's evidence was marked closed, the trial Resident Magistrate ordered for the same exhibit to be returned and put under the custody of the 2nd accused person. Reasons for his order were that the 2nd accused is the owner of the motor vehicle; hence it will remain in good condition under his custody, and that the court has no enough space to keep the same.

The trial Resident Magistrate ordered further that if the exhibit is needed it should be brought in court. He thus, ordered the learned State Attorney to handover the key of the said motor vehicle to the court so that it can be given to the 2nd accused person. Aggrieved, the applicant lodged the complaint as hinted earlier.

When parties were called to address the court on the order of the trial Resident Magistrate, the Republic appeared through Ms. Zena James learned State Attorney while the Accused/Respondents appeared in person, unrepresented.

In her address, Ms. James started narrating the same story of the case as above. She contended also that the Applicant is complaining about the trial Resident Magistrate's order for exhibit P2 to be in the hands of the 2nd accused without being prayed by any party. She complained also that the exhibit was in safe custody at the Immigration Office yard. Ms. James further stated that the order was given while the case is still in progress to the plausible doubt that the accused persons may temper with the said exhibit. This is because, in that motor vehicle there is a special

compartment which shows that the 2nd accused modified it for the purpose of hiding and aiding illegal immigrants.

According to Ms. James, the said compartment is a special mark which is supposed to be identified by the witnesses. Thus, if returned to the accused persons, may remove they or damage it or the motor vehicle be stolen as a result the whole evidence for the prosecution be damaged. She therefore prayed for this court to revise and quash the order.

The 1st respondent had nothing to say. On the other hand, the 2nd respondent told this court that he has neither received nor handed the said exhibit. He however contended that the order of the trial Resident Magistrate aimed at him to keep the exhibit so that it cannot be damaged. He however left to the court to decide.

I have considered the submissions by the parties. Outrightly, I concur with the Applicant that returning the exhibit before the conclusion of the case would lead to injustice. This is because, according to **Exhibits Management Guidelines of 2020 at Chapter 4. 2 (g)** exhibits are required to be stored in exhibits rooms or store at a court registry, police station or any safe place as the court

may direct depending on its nature. Considering the circumstances of the instant case, it is not safe for exhibit P2 to be in the hands of the accused person as the same is safely stored at the Immigration Office yard.

Nevertheless, it is also my position that returning the exhibit to the accused person before the case is conclusively determined may defeat the law i.e the **Criminal Procedure Act, Cap. 20 R.E. 2022** on disposal of exhibits at the end of the case. For the sake of argument at this stage only, in certain circumstances the law requires the forfeiture of the property used in committing or facilitating the commission of the offence; see **section 351 of the CPA**. If such circumstance would arise while the exhibit is in the hand of the accused person, in my considered view, would make execution difficult.

Again, it is also my position that Immigration Office where the exhibit is kept being the seizing agency and having no objection in storing the exhibit, it is in the interest of justice and for safe custody of the exhibit to remain there.

It was in the light of the foregoing reasons that I revised, quashed and set aside the order and ordered for exhibit P2 to remain under

the custody of immigration office until the finalization of the matter.

Accordingly ordered.



A handwritten signature in blue ink, appearing to read "R.A. Ebrahim", is written over the printed name.

R.A. Ebrahim

JUDGE

Mbeya

26.08.2022