

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CRIMINAL REVISION NO. 4 OF 2021

(Originating from Arusha Resident Magistrate's Court, Criminal Case No. 55 of 2021)

ZEPHANIA SINDIYO MOLLEL.....1ST APPLICANT

SINGOI PUSINDAWA.....2ND APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

31.03.2022 & 12.04.2022

N.R. MWASEBA, J.

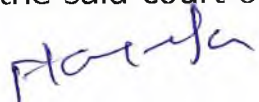
This is a *suo motto* revision of the order of the resident Magistrate's Court (Chitanda, RM) in Criminal Case No. 05 of 2021 where the accused persons were discharged under Section 225(5) of the Criminal procedure Act, Cap 20 R.E 2019 following the failure of the prosecution to bring witnesses to their case.

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For proper appreciation of the circumstances in which the court was prompted to take this course of action it is convenient to set out the background of the matter briefly. By a letter dated 16.12.2021, Criminal Case No. 55 of 2021 was called following the inspection done at the Resident Magistrate's Court of Arusha at Arusha by Hon. Mzuna, J., so that it could be deeply inspected. On the same day the said file was received and tabled before the district registrar who forwarded the same to the Judge-in-Charge for further orders.

Following the said inspection, it was ordered that a criminal revision to be opened against Criminal Case No. 55 of 2021 so that the court could satisfy itself regarding the correctness of the proceedings and the order given.

On 31.03.2022 when the matter was called for hearing Ms. Eunice Makala, learned state attorney, for the respondent submitted that, the accused persons were discharged under **Section 225 (5) of the Criminal Procedure Act**, Cap 20 R.E 2019 due to the failure of the prosecution to bring witnesses. Thus, after a perusal of the alleged file, she found no problem with the said court order and prayed for the court to give necessary orders.



Having heard the submission of the learned state attorney and going through the record in Criminal Case No. 55 of 2021, this court do agree with the submission of the learned state attorney for the respondent that there was no problem with the said discharge order since the prosecution failed to bring the witnesses and its consequence was to discharge the accused persons as required by **Section 225 (5) of the Criminal Procedure Act** which provides that:

*"Where no certificate is filed under the provisions of subsection (4), the court shall proceed to hear the case or, **where the prosecution is unable to proceed with the hearing discharge the accused in the court** save that any discharge under this section shall not operate as a bar to a subsequent charge being brought against the accused for the same offence."* (Emphasis added)

The above provision is very clear that where the prosecution is unable to proceed with the hearing of the case the court shall discharge the accused. On 20th April, 2021 when the matter was called for hearing before the trial magistrate the prosecution was not ready to proceed with the hearing because they did not have witnesses. The record shows that it was a third time the witnesses were not brought in court.

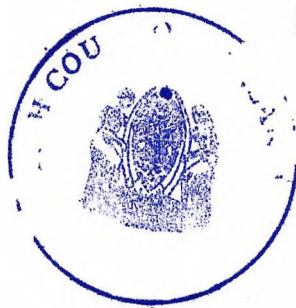
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According to the above provision, the trial magistrate was properly guided by discharging the accused persons as that is the position of the law. Besides, the learned state attorney is of the same view.

Having so said the order of the trial court remain undisturbed and the record be remitted to the trial court for safe custody.

Ordered Accordingly.

DATED at **ARUSHA** this 12th day of April, 2022.




N.R. MWASEBA

JUDGE

12.04.2022