

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOPA DISTRICT REGISTRY

AT BUKOPA

CRIMINAL APPEAL NO. 52 OF 2021

(Arising from Original Criminal Case No. 23 of 2020 of Bukoba RM's Court of Bukoba at Bukoba)

ABEL TELESPOLO..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

19/04/2022 & 13/05/2022

NGIGWANA, J.

The appellant was charged in the Resident Magistrates' Court of Bukoba at Bukoba with the offence of unlawful cultivation of prohibited plants contrary to section 11 (a) of the Drugs control Enforcement Act No. 05 of 2015.

It was alleged in the trial court that the, appellant on 15th day of April, 2019 during morning hours at Ntobeye within Ngara District in Kagera Region, was found in unlawful cultivation of prohibited plants to wit; 2.4 hectors of cannabis sativa commonly known as Bangi.

The appellant denied the charge and as a result, the case proceeded to a full trial at which the prosecution paraded seven (7) witnesses and tendered eight (8) exhibits while the appellant defended himself and tendered no exhibit.

At the conclusion of the trial, the trial court found the appellant guilty hence the appellant was convicted and sentenced to serve a term of thirty (30) years in jail.

Aggrieved by the decision of the trial court, the appellant has come to this court armed with eleven 11 grounds of appeal which for the reasons to be disclosed later, I see no compelling reasons to reproduce them here.

When the appeal came for hearing, the appellant appeared in person and unrepresented while Mr. Grey Uhagile, learned State Attorney appeared for the Republic/Respondent.

Before the commencement of the hearing, Mr. Uhagile drew the attention of this court that in the course of making preparation for the hearing of this appeal, he discovered that there was change of magistrates but the procedure was not complied with. The learned State Attorney prayed for leave to address the court on that issue, the prayer which was not objected by the appellant, hence granted.

Taking the floor, Mr. Uhagile submitted that the trial court records show that initially, the case was before W. Yona (RM) who recorded the evidence of all prosecution witnesses. However, the matter was later re-assigned to **Hon. Mpitanjia (RM)** who finalized the case. Uhagile added that it is unfortunate that the successor magistrate did not comply with section 214 (1) of the Criminal Procedure Act Cap. 20 RE: 2019. The learned State Attorney made reference to the case of **Patrick Boniface versus Republic**, Criminal Appeal No. 02 of 2017 and the case of **Salim Hussein versus Republic**, Criminal Appeal No. 3 of 2011 CAT (unreported) where compliance of section 214 of the CPA was emphasized. Uhagile further stated that in the case at

hand, the reasons for the change of magistrate were assigned but the appellant was not informed of his rights as required by the law, the matter which was conceded by the Appellant. Mr. Uhagile further submitted that the proceedings before the successor Magistrate were a nullity. The appellant on his side stated that he was not afforded a fair trial.

The issue for determination is whether the irregularity committed is capable of vitiating the proceedings recorded before the successor magistrate.

As correctly stated by Mr. Uhagile, initially, the matter was before **W. Yona (RM)** who heard PW1, PW2, PW3, PW4, PW5, PW6 and PW7 and admitted seven (7) exhibits. The records of 16/11/2020 reads;

Date: 16/11/2020

Coram: Hon. J. E. Masesa RM i/c

PP: Absent

B/C: Buberwa, T.

Accused: Absent

Court: The trial magistrate, (W. Yona) is going for study leave; the case file is re-assigned to Hon. Mpitanjia – RM.

Sgd: J.E. Massesa – RM i/c

16/11/2020

From there, the successor magistrate proceed without addressing the accused person now appellant under the terms of section 214 (1) of the Criminal Procedure Act Cap. 20 RE: 2019, and finally convicted and sentenced the appellant as pointed out earlier.

As correctly pointed by the learned State Attorney ,Mr. Uhagile, section 214(1) of the Criminal Procedure Act was not complied with by the Successor Magistrate.

Section 241(1) of the Criminal Procedure Act Cap 20 R: E 2019 provides

"Where any magistrate, after having heard and recorded the whole or any part of the evidence in any trial or conducted in whole or part any committal proceedings is for any reason unable to complete the trial or the committal proceedings or he is unable to complete the trial or committal proceedings within a reasonable time, another magistrate who has and who exercises jurisdiction may take over and continue the trial or committal proceedings, as the case may be, and the magistrate so taking over may act on the evidence or proceeding recorded by his predecessor and may, in the case of a trial and if he considers it necessary, re-summon the witnesses and recommence the trial or the committal proceedings".

In the case of **DPP Versus Laurent Neophiotus and 4 Others**, Criminal Appeal No.252 of 2018, the Court of Appeal of Tanzania interpreting the herein above provision had this to say;

*"The change of trial magistrates is not a simple act to be taken casually but such a serious matter which should be approached with the seriousness it deserves that is to say; whenever it is compelling for a new trial magistrate to take over from a previous one, **he must record the reasons for doing so and invite the accused person to express his position if he will require that the witnesses whose evidence had been taken by the previous Magistrate be recalled to testify before a new trial Magistrate**, and the non-compliance with section 214(1) of the CPA*

renders the proceedings before the new magistrate a nullity for lack of jurisdiction.

In the case at hand, it is very clear that the Successor Magistrate did not completely comply with the said provision of law. He assigned no reasons for the takeover of the proceedings and he did not invite the appellant person to express his position if he will require that the witnesses whose evidence had been taken by the previous Magistrate be recalled to testify her. It should be noted that the reasons for the taking over the partly heard proceedings have to be given by the successor magistrate.

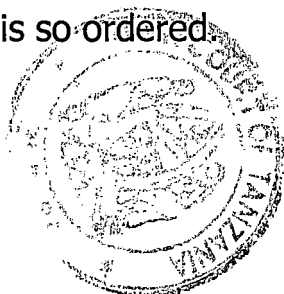
The court of Appeal further insisted in the case of **Gharib Ibrahim Mgalu versus R**, Criminal Appeal No. 05 of 2019 CAT (Unreported) that as per section 214 (1) of the CAP, an accused should be informed of **his right to have the trial continue** or **start afresh** because the right to be heard is fundamental, and therefore the court has an obligation to conduct a fair trial in all respects. Also see **Richard Kamugisha @ Charles Samson and five others, versus, Republic** Criminal Appeal No. 59 of 2002 and **Salim Hussein versus R**, Criminal Appeal No. 3 of 2011 CAT (both unreported).

In the event, the Proceedings before the Successor Magistrate in the matter at hand cannot stand for being a nullity. It is this fatal irregularity which led me to say no compelling reasons to reproduce the grounds of appeal raised by the appellant. The irregularity raised though was not among the grounds of appeal, sufficed to dispose of the matter.

Consequently, the trial court proceedings dated 24/11/2020 as they appear from page 36 of the typed proceedings onwards and conviction are quashed, and the sentence of 30 years imprisonment mated against the appellant is

set aside. The proceedings before the Predecessor Magistrate remain intact. The case file is remitted to the trial court for the predecessor Magistrate **Hon. W. Yona RM** who is now back from studies to proceed with the matter from where he ended. For the interest of justice, in case of a conviction thereof, the date of sentence to be served by the appellant shall remain the date he was sentenced before the Successor Magistrate, and if the appellant wishes to lodge a fresh appeal, the appeal time will start to accrue from the date of delivery of the judgment which will be prepared by the Predecessor Magistrate. While waiting trial before the predecessor Magistrate the appellant shall remain in custody.

It is so ordered.




E. L. NGIGWANA

JUDGE

13/05/2022

Ruling delivered this 13th day of May, 2022 in the presence of Appellant, Mr. Amani Kilua for the Republic, Mr. E. M. Kamaleki, Judges' Law Assistant and Ms. Tumaini Hamidu, B/C.




E. L. NGIGWANA

JUDGE

13/05/2022