

**THE UNITED REPUBLIC OF TANZANIA**

**(JUDICIARY)**

**THE HIGH COURT (MUSOMA SUB REGISTRY)**

**CRIMINAL APPEAL No. 21 OF 2022**

*(Arising from the District Court of Serengeti at Mugumu in Economic Case No. 43 of  
2020)*

1. **IBRAHIM ZAKARIA @ GEBWANA**  
2. **JACOB CHARLES @ ATIANG'I**  
3. **MASWE MWITA MWIKWABE** } ..... **APPELLANTS**  
*Versus*

**THE REPUBLIC** ..... **RESPONDENT**

**JUDGMENT**

06.03.2023 & 07.03.2023

Mtulya, J.:

Section 214 (1) of the **Criminal Procedure Act [Cap. 20 R.E. 2022]** (the Act) was enacted to regulate shifting hands of partly heard criminal proceedings from one judicial officer to another. However, the change of one judicial officer to another during the proceedings in criminal trials, must be accompanied with reasons. The cited section is not express on the requirement of appending reasons on the record, but our superior court, the Court of Appeal (the Court), in 2013 had interpreted the section, in the precedent of **Priscus Kimario v. Republic**, Criminal Appeal No. 301 of 2013, to mean that:

*....where it is necessary to re-assign a partly heard matter to another magistrate, **the reason for the failure of the first magistrate to complete must be recorded.***

(Emphasis supplied).

If that is not done, according to the Court: *it may lead to chaos in the administration of justice.* The reasons of chaos are displayed in the pages of the same Court in the precedent of **Georges Limited v. The Honourable Attorney General & Another**, Civil Appeal No. 29 of 2016, that:

*There are a number of reasons why it is important that a trial started by one judicial officer be completed by the same judicial officer unless it is not practicable to do so. For one thing, the one who sees and hears the witness is in the best position to assess the witness's credibility. Credibility of witnesses which has to be assessed is very crucial in the determination of any case before a court of law. Furthermore, integrity of judicial proceedings hinges on transparency. Where there is no transparency justice may be compromised.*

On the reservations, the Court in the precedent **Priscus Kimario v. Republic** (supra), had thought that: *anyone, for personal reasons could just pick up any file and deal with it to detriment of justice.* The Court concluded that: *this must not be allowed.* On the status of the proceedings taken by another judicial officer without recording reasons, the Court in the precedent of **Abdi Masoud @ Iboma and Three others vs Republic**, Criminal Appeal No. 116 of 2015, stated that:

*In our view under s. 214 (1) of the CPA it is necessary to record the reasons for re-assignment or change of trial magistrate. It is a requirement of the law and has to be complied with. It is a pre-requisite for the second magistrate's assumption of jurisdiction. **If this is not complied with, the successor magistrate would have no authority or jurisdiction to try case.***

(Emphasis supplied).

Regarding available remedies in situation where a successor magistrate failed to give reasons in taking-over proceedings started by another judicial officer, Court directed that all proceedings of the successor judicial officer are to be nullified,

conviction set aside and judgment quashed as the proceedings which produced the judgment have no basis.

There is a large number of pages available in the Court in favour of the thinking (see: **Hamisi Miraji v. Republic**, Criminal Appeal No. 541 of 2016; **Donatus Yustad @ Begumisa v. Republic**, Criminal Appeal No. 365 of 2016; **Issaya Mato @ Issa And Another v. Republic**, Criminal Appeals No. 66 & 188 of 2015; **Mathias 8 Kalonga and James Moshi v. Republic**, Criminal Appeal No. 438 of 2015; and **Barnabas Leon v. Republic**, Criminal Appeal No. 309 of 2014. This court has also been on the move in support of the directives of our superior court in a bunch of decisions (see: **Samwel Dickson Enock @ Jeremia Michael Bwile & Two Others v. Republic**, Criminal Appeal No. 116 Of 2017; **Mairo Marwa Wansaku v. Simon Kiles Samwel**, Civil Appeal No. 37 of 2020; and **Paschal Kimwaga @ Mahimbo v. Republic**, Criminal Appeal No. 43 of 2022).

In the present appeal, record shows that on 2<sup>nd</sup> August 2021, Hon. Ngairi SRM completed hearing of four prosecution witnesses and ordered defence hearing to proceed on 11<sup>th</sup> August 2021 at 09:00 hours. On the indicated date he was not present and a month later, on 8<sup>th</sup> September 2021, Hon. Semkiwa RM decided

to take up the proceedings and at page 51 of the proceedings ordered that: *the case is re-assigned before me. I hereby proceed with it under section 214 of the Criminal Procedure Act [Cap. 20 R.E. 2019].*

However, there were no reasons assigned in the proceedings and the accused persons were absent as per record. Hon. Semkiwa proceeded with the defence hearing on 20<sup>th</sup> October 2021 and on 8<sup>th</sup> November 2021 pronounced judgment of the **District Court of Serengeti at Mugumu** (the district court) in **Economic Case No. 43 of 2020** (the case). The appellants were not satisfied with the decision of the district court in the case and preferred **Criminal Appeal No. 21 of 2022** (the appeal) in this court. The appellants were complaining on three issues, *viz.* first, the district court relied on wrong evidence of PW3; second, denial of the right to be heard during disposition of the trophies; and wrong admission of prosecution exhibits.

Yesterday morning when the appeal was called for hearing, Ms. Agma Haule and Mr. Felix Mshama, learned State Attorneys appeared for the Republic and contended that the procedure enacted in section 214 (1) of the Act was faulted when the case file moved from Hon. Ngaile SRM to Hon. Semkiwa RM. In order

to substantiate their submission, Ms. Haule cited the precedent in **Samwel Dickson Enock @ Jeremia Michael Bwile & Two Others v. Republic** (supra) and prayed the proceedings of the district court in the case from 2<sup>nd</sup> August 2021 be set aside and judgment be quashed for proper application of laws in section 214 (1) of the Act.

Replying the submission of the learned minds, the appellants prayed this court to proceed with the appeal hearing despite the breach of the law in section 214 (1) of the Act. I have consulted the record and authorities indicated in this appeal, and found that the case at the district court changed hands from Hon. Ngaile SRM to Hon. Semkiwa RM without there being reasons of shifting hands. According to the Court, that cannot be allowed as integrity of judicial proceedings hinges on transparency.

Having said so, I am moved to nullify all the proceedings of the successor magistrate Hon. Semkiwa RM at the district court in the case, quash the conviction arising from the proceedings and set aside the sentence imposed on the appellants. For the interest of justice of both parties, I remit the case to the district court for continuation of defence hearing from the point where Hon. Ngaile SRM ended the prosecution hearing, specifically on 2<sup>nd</sup> August

2021. In the meantime, the appellants shall remain in custody until called for defence hearing at the district court.

Ordered accordingly.

Right of appeal explained to the parties.



F. H. Mtulya

**Judge**

07.03.2023

This Judgment was delivered in Chambers under the Seal of this court in the presence of **Mr. Felix Mshama**, learned State Attorney for the respondent and in the presence of the appellants, **Mr. Jacob Charles @ Atiang** and **Mr. Maswe Mwita @ Mwikwabe**, through teleconference placed at this court in Bweri area within Musoma Municipality, Serengeti Prison and in the offices of the Director of Public Prosecutions, within Musoma Municipality in Mara Region.

F. H. Mtulya

**Judge**

07.03.2023