

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT

(MUSOMA SUB REGISTRY)

CRIMINAL APPEAL No. 20 OF 2022

*(Arising from the District Court of Serengeti at Mugumu in
Economic Case No. 132 of 2020)*

1. CHACHA ZAKARIA @ NJAMA
2. NCHAMA NYANGIGE @ SABAI } **APPELLANTS**

Versus

THE REPUBLIC **RESPONDENT**

JUDGMENT

13.03.2023 & 14.03.2023

Mtulya, J.:

Last week, specifically on 7th March 2023, this court had remitted a case file to the **District Court of Serengeti at Mugumu** (the district court) in **Economic Case No. 43 of 2020** (the case) from the judgment of this court in **Republic** against **Ibrahim Zakaria @ Gebwana & Two Others, Criminal Appeal No. 21 of 2022**. It was ordered so following a fault on absence of reasons on the record regarding change of hands from one judicial officer to another in the proceedings of the district court.

This court arrived at the decision for want of proper application of enactment in section 214 (1) of the **Criminal Procedure Act [Cap. 20 R.E. 2022]** (the Act) and abiding with the

directives of the Court of Appeal (the Court) in the precedent of **Priscus Kimario v. Republic**, Criminal Appeal No. 301 of 2013. Before remitting the case in the district court, this court had nullified all the proceedings of the successor magistrate, quashed the conviction and set aside the sentence imposed on the appellants.

Yesterday morning, the present appeal was scheduled for hearing in this court and the appellants prayed their six (6) complaints against the decision of the district court be taken as they are displayed on the petition of appeal. **Mr. Felix Mshama**, learned State Attorney for the Republic on the other hand had claimed that there is a point of law which need to be resolved before appeal hearing could take its course.

In explaining his point, Mr. Mshama contended that the proceedings of the district court at page 36 shows that no reasons on transfer of the case file from Hon. Ngaile to Hon. Semkiwa. According to Mr. Mshama the practice is discouraged by section 214 of the Act and precedent in **Samwel Dickson Enock @ Jeremia Michael Bwile & Two Others v. Republic**, Criminal Appeal No. 116 of 2017. With the way forward, he prayed for proceedings be set aside from when Hon. Semkiwa took up the

case file and any orders from the proceedings be quashed for want of proper application of section 214 of the Act. When the appellants were consulted on the subject, they admitted that page 36 did not display reasons when successor magistrate took up the case file.

I have had a glance at page 36 of the proceedings of the district court in the case conducted on 23rd September 2021. The following is depicted:

Date: 23/09/2021

Coram: J.G. Semkiwa - RM

Pros: Mr. Nnko

Acc: Both Present

B/C: E. Mutelan - RMA

Court: This case is re-assigned before me. I hereby proceed with it under section 214 of the **Criminal Procedure Act** [Cap. 20 R.E. 2019]

Sgd. J. Semkiwa – RM

23/09/2021

It is at display and vivid that the record shows shifting of hands of a partly heard proceedings from Hon. Ngaile to Hon. Semkiwa. However, there are no accompanied reasons for the shifting of hands. According to the Court, in the precedent of **Priscus Kimario v. Republic** (supra), if reasons are not recorded in

proceedings: *it may lead to chaos in the administration of justice as 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.*

In that prohibition, and regarding the status of the successor judicial officer and the way forward, the Court in the precedent of **Abdi Masoud @ Iboma & Three Others v. 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 judicial officer has failed to give reasons in taking-over proceedings started by another judicial officer, the Court had already 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 multiple decisions in the Court supporting the move (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 supporting the directives of Court in a bunch of decisions without any hesitation (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).

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 hearing from where Hon. Ngaile SRM ended his proceedings, specifically on 29th July 2021. In the meantime, the appellants shall remained in custody until when summoned for hearing proceedings at the district court.

Ordered accordingly.

Right of appeal explained to the parties.




F. H. Mtulya

Judge

14.03.2023

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. Chacha Zakaria @ Njama** and **Mr. Nchama Nyangige Sabai**, 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

14.03.2023