IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA SUB-REGISTRY)
AT ARUSHA

CRIMINAL APPEAL NO. 87 OF 2023
(Originating from the Resident Magistrates' Court of Arusha, Economic Case No. 40 of 2020)

PETER MICHAEL MADELEKA ..... APPELLANT

Versus

THE REPUBLIC ..... RESPONDENT

JUDGMENT

25th August & 8th September 2023

Masara, J

It is rare and uncommon for a winning party in a criminal appeal to find himself behind bars on more serious charges than those he appealed against. The Appellant herein may be a living testimony of the rarest of such circumstances. The following story tells it all: On 14/05/2020, the Appellant, **Peter Michael Madeleka** and his dear wife, **Jamila Augustino Ilomo**, were arraigned and charged with ten counts in the Resident Magistrates' Court of Arusha (hereinafter "the trial court"). Two of the counts, the 9th and 10th, constituted offences which the law curtails bail; namely, Money laundering. The case, being an economic one, went through a series of adjournments on the pretext that the investigation was incomplete.

On 07/11/2020, the Appellant and his wife wrote a letter to the Director of Public Prosecutions (DPP), signifying their intention to enter into a plea bargain arrangement. The DPP accepted the request, whereas the plea-bargaining agreement between the Appellant, his co-accused and the DPP was signed on 13/03/2021. In the plea-bargaining agreement, the Appellant and his co-accused were to plead guilty to an offence of *"obtaining credit by false pretence."* The agreement also required the duo to pay compensation of TZS 2,000,000/=. The Appellant and his co-accused paid the compensation to the DPP's account No. 9921169817, held at the BOT on 30/03/2021. Payment was made before the agreement was taken before the trial magistrate.

Subsequently, the DPP informed the trial court of the plea arrangements and the plea-bargaining proceedings were conducted on 27/04/2021. After entering into the plea agreement, the original charge sheet was substituted by a new charge containing one count of Obtaining Money by False Pretence, contrary to Section 302 of the Penal Code, Cap. 16 (R.E. 2019). When the substituted charge was read over to them, the duo pleaded guilty. The Appellant and his co-accused were convicted and sentenced to pay a fine of TZS 200,000/= each failure of which they were

to undergo a community service for a period of three years. They paid the fine.

The Appellant, on a second thought, reconsidered his plea and decided to challenge his conviction and sentence. He first tried his luck with the High Court but was advised to go back to the trial court as per the dictates of the law. On 21/02/2022, he files application before the trial court vide Misc. Criminal Application No. 1 of 2022 seeking, among others, an order setting aside the conviction, sentence or orders made under the plea-bargaining agreement. The Appellant also sought to be refunded the TZS 200,000/= he paid as fine and TZS 2,000,000/= that he had paid as compensation in respect of the plea-bargaining agreement. The trial court dismissed the application for want of merits on 11/08/2022.

The Appellant was not satisfied by that decision. He appealed to this Court vide Criminal Appeal No. 160 of 2022. This Court (Bade, J.) allowed the appeal. In her judgment delivered on 17/07/2023, she, among others, set aside the proceedings of the plea-bargaining agreement. She further ordered parties to revert to their original positions on the stage before plea bargain agreement was reached and a trial *de novo* to ensue.

Following the decision, the Appellant was re-arraigned before the trial court on the same day. The trial court, allegedly guided by the decision

of the High Court, directed that the Appellant be remanded in custody so as to face the charges he was to face before the Plea Bargain Agreement. On 31/07/2023, when the case was called for mention, counsel for the Appellant moved the trial court to release the Appellant on bail because, in their view, the charge against the Appellant was a bailable one. After hearing both parties, the trial magistrate, in his ruling dated 01/08/2023, dismissed the prayer. The basis of the trial court's decision was that after the decision of this Court in Criminal Appeal No. 160 of 2022, parties reverted to their original positions; hence the charge against the Appellant remained the original one, which had ten counts, involving money laundering counts which are unbailable.

Undaunted, the Appellant has preferred this appeal armed with two grounds; namely:

a) *That, the Honourable Court's (sic) erred in law and fact in holding that consequent to the nullification of plea bargain agreement the parties are reverted to the old charge before amendment that containing (sic) unbailable offences; and*
b) *That, the Honourable trial magistrate erred both in law and fact by denying the Appellant bail on the basis of non-existing charge.*

On 28/08/2023, when the case was called on for hearing, the Appellant was represented by Mr Boniface Mwabukusi, Mr Sheck Mfinanga, Mr

Simon Mwambo and Mr Yonas Masai, all learned advocates. The Respondent was represented by Mr Eliniayi Njiro, learned Senior State Attorney and Ms Tusaje Samwel, Mr Filbert Msuya and Ms Joyce Mafie, all learned State Attorneys. The appeal was heard *viva voce*.

Submitting in support of the grounds of appeal conjointly, Mr Mwabukusi urged that after the appeal was upheld and trial *de novo* ordered, there was in existence a substituted charge before the trial court. He asserted that once there is a substituted charge, the former charge ceases to exist. To support his assertion, he made reference to the Court of Appeal decisions in **Albanus Aloyce and Another vs Republic, Criminal Appeal No. 283 of 2015** and **Ashraf Akber Khan vs Ravji Govind Varsan, Civil Appeal No. 5 of 2017** (both unreported). It was Mr Mwabukusi's further submission that the decision of the trial court be rescinded as the trial magistrate misdirected himself on what proceedings are. According to him, court proceedings refer to the process after a document is filed in court; therefore, a charge sheet or plaint cannot amount to court proceedings or part thereof. Bolstering his contention, the learned advocate referred to the case of **Technology Packaging Machinery Co. Ltd & Another vs A-One Products and Bottlers Ltd, Civil Application No. 517 of 2018** (unreported). Mr Mwabukusi

maintained that it was wrong for the trial magistrate to include the charge sheet as part of court proceedings. He urged the Court while determining this appeal, to take into consideration the orders issued. According to Mr Mwabukusi, what were quashed by the High Court, on appeal, were orders issued by the trial court relating to the plea bargain arrangement. He insisted that such orders included bindingness of the plea bargaining and the order for payment of fine. Mr Mwabukusi further contended that throughout the High Court decision there is no place where invalidation of the charge sheet can be inferred. On what amounts to court proceedings, the learned advocate made reference to section 2 of the Magistrates Courts Act, stating that a charge sheet is not included in that definition. He prayed that the Court holds that the charge before the trial court allowed grant of bail.

Supplementing the above, Mr Mfinanga submitted that the High Court in Criminal Appeal No. 160 of 2022 gave three orders. That, in the proceedings of the trial court dated 27/04/2021 there were two orders. *First*, the bindingness of the plea-bargaining agreement to the parties, and *second*, fine to be paid by the accused through Bank. In his view, the decision did not set aside the charge sheet. He maintained that a court has no power to validate the charge already substituted because a court

is not a prosecutor. According to Appellant's counsel, this Court is bestowed with supervisory and revisionary powers in terms of section 30 of the Magistrate Courts Act (MCA) to intervene and correct the proceedings, ruling or orders of subordinate courts, including at this appellate stage. He also made reference to section 7 of the Judicature and Application of Laws Act and sections 148(3) and 373(1)(b) of the Criminal Procedure Act (CPA), which empower this Court to step into the shoes of the trial magistrate and grant bail to the Appellant. To reinforce his contention, Mr Mfinanga relied on the case of **Director of Public Prosecution vs Godbless Jonathan Lema, Criminal Appeal No. 135 of 2016** (unreported), in which, after allowing the appeal, this Court proceeded to grant bail to the Respondent. He concluded by urging the Court to allow the appeal and grant the prayers sought.

Opposing the appeal, Ms Njiro challenged the interpretation made by advocates for the Appellant regarding the term "proceedings". To her, a charge sheet is part of court proceedings. Arguing otherwise, is a serious misconception, she asserted. She further submitted that criminal proceedings are instituted once an accused person is called to enter a plea under section 128(1) and (6) of the CPA. She maintained that proceedings takes all actions in law whether outside or in court. Reference

was made in the cited case of **Technology Packaging Machinery Co. Ltd & Another vs A-One Products and Bottlers Ltd** (supra). In her further view, the decision of this Court stated that parties revert to their original position before the plea-bargaining agreement.

She conferred that the amendment of the charge was done in the plea-bargaining process; hence, substitution of the charge was a result of the agreement as provided for in the first paragraph of the plea bargain agreement dated 27/04/2021. It was further the contention by the learned Senior State Attorney that as the plea agreement was quashed, everything in it was terminated. That, Parties reverted to what existed before the agreement was reached; which is, the case was still at the mention stage. That, the original charge sheet contained the offence of money laundering which is unbailable. To her, the Appellant should continue to stand trial for the ten counts charge that existed before. She urged the Court to dismiss the appeal for want of merits.

In a brief rejoinder, Mr Mwabukusi and Mr Mfinanga stated that the position taken by the Respondent was novel as a plea presupposes presence of a charge. They maintained that the charge sheet was not part of the proceedings because, if it was to be so interpreted, the first order in the decision of this Court, in Criminal Appeal No. 160 of 2022, quashed

everting including the original charge. They also asked the Court to note that the Respondent did not oppose the submission by the Appellant's counsel that once a charge is substituted, the original one ceases to exist and cannot be validated by the Court.

I have given deserving weight to the grounds of appeal, the rival submissions by counsel for the parties, as well as the trial court records The issue for determination in this case is whether the trial court was justified when it refused to admit the Appellant to bail following the setting aside the plea-bargaining proceedings by this Court.

To properly respond to this issue, a corollary issue of whether the charge sheet substituted during the plea-bargaining process was salvaged by the decision of this Court has to be answered. Basically, the epicentre of this appeal rests on the interpretation of the final orders of this Court in Criminal Appeal No. 160 of 2022. I am aware that that decision is subject of an appeal before the Court of Appeal of Tanzania, following a notice of appeal dated 17th July 2023 and filed by the present Appellant on 18th July 2023. It is therefore with the greatest caution that I intend to make reference to it Such reference is in no way intended to interfere with the appeal processes currently under way. In **Jumanne Mashamba vs**

Republic, Criminal Appeal No. 255 of 2000 (unreported), the Court of Appeal restated the position of the law that:

> *"A criminal appeal to this Court is instituted when an intending appellant files a written notice of appeal in the prescribed form under Rule 61(1) of the revoked Court of Appeal Rules, 1979 (old Rules) (or Rule 68(1) of the current Court of Appeal Rules, 2009)".*

Further, in **Awiniel Mtui and Three Others vs Stanley Ephata Kimambo (Attorney for Ephata Mathayo Kimambo), Civil Application No. 19 of 2014** (unreported) the Court of Appeal held *inter alia* that: *"... once a notice of appeal has been duly lodged, the High Court ceases to have jurisdiction over the matter."*

With the above guidance from the Court of Appeal, any reference made on the impugned decision is only for the purposes of fair determination of the appeal before me. For that purpose, I will only restrict myself to the non-contentious part of the judgment; namely, the final orders. For easy of reference, the orders of this Court in Criminal Appeal No. 160 of 2022, after nullifying the proceedings of the trial in Economic Case No. 40 of 2020, were states in the following terms:

> *"In the final analysis, this appeal is allowed, and consequently,*
>
> a) *the **proceedings** of the lower court are hereby quashed;*

b) *the* ***court orders of the plea bargain agreement*** *are set aside;*

c) ***the parties revert to their original positions on the stage before the plea bargain was reached,*** *and the accused be tried de novo."* (Emphasis added)

The last order seems to me to be the order that informed the impugned decision by the trial court magistrate. He interpreted it to mean that charge sheet which existed before the plea bargain agreement was presented before it is the ones that the Appellant should stand trial of in the directed trial *de novo*. This view is shared with the Respondent's counsel. On the other hand, counsel for the Appellant contends that the trial *de novo* should be on the charge (substituted charge) which formed the basis for the Appellant's conviction and sentence.

As earlier indicated, I will not, and do not, intend to engage myself in the interpretation of the decision of my colleague. That duty shall be done by the Court of Appeal in a proper forum. I, nevertheless, find the orders issued to be straight forward. My duty, therefore, is restricted to the determination of the Appeal on the grounds presented before me. I will first deal with the first ground which reads:

That, the Honourable Court's (sic) erred in law and fact in holding that consequent to the nullification of plea bargain agreement the

parties are reverted to the old charge before amendment that containing (sic) unbailable offences.

As earlier conferred, Counsel for the Respondent are of the view that the decision of this Court, after setting aside the proceedings of the trial court in respect of the plea bargaining, did not retain the substituted charge; namely, Obtaining Money by False Pretence. For them, the setting aside of the proceedings entailed setting aside of the substituted charge as the same is part of the proceedings of the 27/4/2021 which this Court intended to set aside. Counsel for the Appellant, on the other hand, believe that the setting aside of the proceedings do not include the charge sheet containing one count of Obtaining Money by False Pretence. They argue that the former charges having been withdrawn by the Prosecution, cannot be restored by the Court, as doing so would mean that the Court is involved in determining which charges the Appellant should stand for. In other words, it is the Appellant's view that this Court cannot validate a non-existing charge, as the ten counts were properly withdrawn and a new one proffered instead.

I have pondered over the contentions by the parties regarding the salvaging or otherwise of the charge read over to the Appellant on 27/4/2021 following the plea bargain arrangement. The crux of the

contentions hitherto is whether a charge forms part of the proceedings and whether a withdrawn charge can be reinstated by a court order.

I should, *apriori*, state that the duty of a court is to dispense justice. It does not extend to making a determination of what charges or claims a party should present before it. In Tanzania, criminal cases come before a court after a decision has been made by the Director of Public Prosecution (DPP), or a public prosecutor, following an investigation of a crime. These powers are vested on the DPP by the Constitution of the United Republic and statutory law. Article 5B of the Constitution provides:

> *"(1) There shall be a Director of Public Prosecutions who shall be appointed by the President from amongst persons with qualifications specified in subarticle (2) of Article 59 and has continuously held those qualifications for a period of not less than ten years.*
> *(2) The Director of Public Prosecutions shall have powers to* ***institute, prosecute and supervise*** *all criminal prosecutions in the country.*
> *(3) The powers of the Director of Public Prosecutions under subarticle (2),* ***may be exercised by him in person or on his directions, by officers under him,*** *or any other officers who discharge these duties under his instructions.*

(4) In exercising his powers, the Director of Public Prosecutions shall be free, shall not be interfered with by any person or with any authority and shall have regard to the following -

(a) the need to dispensing justice;

(b) prevention of misuse of procedures for dispensing justice;

(c) public interest.

(5) The Director of Public Prosecutions shall exercise his powers as may be prescribed by any law enacted or to be enacted by the Parliament. (Emphasis added)

Where charges against a person are brought before a court of law, the court's duty is restricted to hearing and making a determination of the veracity and preponderance of the same after hearing evidence presented. These powers are also constitutional. Article 107A of the Constitution provide guidance of the role of courts. It states:

"(1) The Judiciary shall be the authority with final decision in dispensation of justice in the United Republic of Tanzania.

(2) In delivering decisions in matters of civil and criminal matters in accordance with the laws, the court shall observe the following principles, that is to say -

(a) impartiality to all without due regard to ones social or economic status;

(b) not to delay dispensation of justice without reasonable ground;

(c) to award reasonable compensation to victims of wrong doings committed by other persons, and in accordance with the relevant law enacted by the Parliament;

(d) to promote and enhance dispute resolution among persons involved in the disputes;

(e) to dispense justice without being tied up with technicalities provisions which may obstruct dispensation of justice."

Thus, the mandate of the court and that of the DPP are quite distinct when it comes to institution of criminal proceedings. "Criminal proceeding" is not defined by our statutes. The Magistrates Courts Act, Cap. 11 (R.E. 2019) only defines "proceedings" in the following terms: *"proceeding" includes any application, reference, cause, matter, suit, trial, appeal or revision, whether or not between parties*". When faced with a similar quagmire, the Court of Appeal in **Techlong Packaging Machinery Co. Ltd & Anor vs A-One Products and Bottlers Limited, Civil Application No. 517 of 2018** (unreported), after noting that the term "proceedings" was not defined by our statutes, it resorted to definitions provided by Legal Dictionaries and treatises. As per the **Blacks Law Dictionary, 10th Edition**, criminal proceedings entail:

"a judicial hearing session, or prosecution in which a court adjudicates whether a person has committed a crime or, having already fixed guilt, decides on the offender's punishment; a criminal hearing or trial".

A criminal charge, on the other hand, is defined by the same Dictionary as: *"a formal accusation of an offence as a preliminary step to prosecution."*

From the definitions above, one can easily decipher the distinction between a charge and a criminal proceeding. While the former is done outside the court and initiates the process of a hearing, the latter constitutes a court adjudication and determination. In other words, a criminal proceeding entails all processes taking place in court from the time a charge is filed to the time the court finally determines the same and gives necessary orders. I, thus, agree with Counsel for the Appellant that quashing of the proceedings of the trial court could not extend to quashing the charge which was the subject of the impugned proceedings.

The next question is whether setting aside the Plea Bargain Agreement washed away the substituted charge as well. Counsel for the Respondent ardently argued that the charge of Obtaining Money by False Pretence was part and parcel of the Plea Agreement entered by the Appellant and the DPP, which informed the decision of the trial court proceedings of 27th April 2021. She made reference to Paragraph 1 of the said Agreement. That paragraph, reproduced verbatim, stated: *"Accused persons agree to* ***plead guilty to the offence of obtaining credit by false pretence***

Contrary to sections 302 of The Penal Code [Cap 16 RE: 2019]."
(emphasis added)

That position is not shared by the advocates for the Appellant. To them, the substituted charge, Obtaining Money by False Pretence, stands as the only charge before the trial court and cannot be merged with the impugned proceedings of the 27th April 2021.

To appreciate these varying positions and before deciding whether the substituted charge was washed away by the order of this Court when it nullified the Plea Agreement, it is imperative to explore when a plea bargain agreement, in the circumstances of this matter, commenced and ended. The answer to this question is easily discerned from the law governing plea bargaining proceedings. Section 194A of the CPA provides:

> *"194A.-(1)* ***A public prosecutor, after consultation with the victim or investigator where the circumstances so permit, may at any time before the judgment,*** *enter a plea-bargaining arrangement with the accused person and his advocate if represented or, if not represented, a relative, friend or any other person legally competent to represent the accused person.*
> *(2)* ***The accused person or his advocate or a public prosecutor may initiate a plea bargaining and notify the court of their intention to negotiate a plea agreement.***

(3) ***The court shall not particlpate in plea negotiations between a public prosecutor and the accused person.***

(4) Where prosecution is undertaken privately, no plea agreement shall be concluded without the written consent of the Director of Public Prosecutions." (Emphasis added)

From the above, a plea-bargaining agreement may be initiated by either a public prosecutor, after consultation with the victim or investigator where the circumstances so permit or by an accused or his advocate. Often times, if not always, this is done after proceedings before court are on progress but before judgment. In the appeal under consideration, the plea-bargaining arrangements were initiated by the Appellant on 07/11/2020 through his letter addressed to the Regional Prosecutions Officer. The letter was received by the Arusha National Prosecutions Office on 09/11/2020. The plea agreement that contained terms and conditions therein was between the Appellant and the Director of Public Prosecutions on behalf of the Republic. The Agreement intimated that the Appellant and his co-accused were to plead guilty to a lesser offence and pay compensation to the DPP's account, in exchange for discontinuation of the charges they were facing.

On 30/03/2021, the Appellant paid the compensation as per the agreement. On 27/04/2021, the trial court was informed by the public

prosecutor of the existence of the plea-bargaining agreement which was yet to be. The plea-bargaining proceedings were conducted on that day, including the signing of the Plea Agreement by the Appellant, his advocate and the State Attorney. Before commencing the proceedings, the learned State Attorney read out a new charge containing one count of Obtaining Money by False Pretence, contrary to Section 302 of the Penal Code. That was done pursuant to Section 194B of the Penal Code which provide as follows:

> *"Where, consequent to a plea-bargaining arrangement, a plea agreement is entered into between a public prosecutor and an accused person-*
> *(a) the public prosecutor* ***may charge the accused person with a lesser offence, withdraw other counts or take any other measure as appropriate depending on the circumstances of the case;***
> *(b) the accused person may enter a plea of guilty to the offence charged or to a lesser offence or* ***to a particular count or counts in a charge with multiple counts in exchange for withdrawal of other counts;*** *or*
> *(c) the accused person may be ordered to pay compensation or make restitution or be subjected to forfeiture of the proceeds and instrumentalities that were used to commit the crime in question."*
> *All that time, the charge that faced the Appellant was the original charge sheet that had ten counts.* (Emphasis added)

The records of the trial court show that the State Attorney representing the Republic asked the trial court to register the Plea Agreement. The prayer was heeded after the Appellant and his co-accused confirmed about voluntarily entering into it. Thereafter a new charge was read over and the Appellant and his co-accused pleaded guilty thereto. The learned State Attorney thereafter read out the facts constituting the substituted charge, to which the Appellant agreed to. They were therefore convicted of the offence of Obtaining Money by False Pretence on their own plea of guilty. Upon mitigation, they were ordered to pay a fine or serve community service as already stated. Two orders were later issued; namely, (a) This plea agreement is binding to both parties no party is allowed to go against it, and (b)Fine to be paid to the accused (sic) through bank. The second order as per the handwritten record was for the Fine to be paid to the "account" not the accused as reflected in the typed proceedings.

It is noted from the records above that, while the Agreement was for the Accused persons to plead guilty to the offence of Obtaining Credit by False Pretence, the substituted charge was for Obtaining Money by False Pretence. That alone may serve to negate the argument presented by the learned Senior State Attorney that paragraph 1 of the Plea Agreement

included the substituted charge as part of the Agreement. I am aware that the provision of Section 302 of the Penal Code is used in a variety of incidences. However, credit and money cannot be said to be the same. In an ideal case, such anomaly could be interpreted to be a material variance leading to unfair trial. That, however, should not detain me as it does not form part of the complaints before me and was not even an issue before Ms Bade, J. in Criminal Appeal No. 160 of 2022.

Coming back to the pertinent issue regarding the substituted charge, there is no gain saying that in order to pave way for the Plea Agreement registration and subsequent conviction of the Appellant herein, the new charge sheet was presented at the trial Court. When this new or substituted charge was read over to the Appellant, the old charge sheet filed on 14th May 2020 ceased to exist. This is common sense and legal prudence. There cannot exist two parallel charge sheets before a court of law involving the same parties in the same file. The law as aptly clarified by the Court of Appeal in the case of **Albanus Aloyce & Anor vs the Republic** (supra) and **Ashraf Akber Khan vs Ravji Govind Varsan** (supra) is that where a charge is substituted, the former or earlier charge ceases to exist. This position is sacrosanct and, as earlier stated, substitution of a charge is at the sole discretion of the prosecution. A court

of law cannot and should not be seen to resurrect what was otherwise killed by the prosecution.

Having so determined, I do agree with the Appellant's Counsel that it was wrong for the trial court to hold that the decision of this Court nullifying the trial court proceedings and the Plea Agreement served to restore the 14th May 2020 old charges substituted on 27th April 2021. By so holding, the trial court was effectively turning itself into a prosecutor. For avoidance of doubts, I see nothing in the judgment of this Court (Criminal Appeal No. 160 of 2022) to suggest that the Appellant was to be tried on the old or recanted charges. Such an interpretation is absurd because those charges were no longer in the trial court's records, having been substituted on 27 April, 2021. The order of trial *de novo*, in my view, was for the accused to be retried on the charges that led to his conviction; namely, Obtaining Money by False Pretence, contrary to Section 302 of the Penal Code. I say so because the ground that led to the decision of the retrial involved the laxity exhibited by the trial court regarding whether the Appellant was entitled to be provided with the prosecution evidence. The evidence related to the substituted charge not the former one. I therefore sustain the first ground of appeal.

I now move to consider the 2nd ground of appeal which is to the effect that: "*the Honourable trial magistrate erred both in law and fact by denying the Appellant bail on the basis of non-existing charge.*"

Having concluded that the only charge in the records of the trial court was the one filed on 27th April 2021, containing one count of Obtaining Money by False Pretence; I have no hesitation to agree with the Appellant's counsel that denying the Appellant bail on ground that he was facing charges that were substituted was a gross misdirection and error. The Offence of Obtaining Money by False Pretence is not one of the offences listed as non bailable offences under section 148 of the CPA. It is a bailable offence. Had the trial court properly directed itself to the law, it would have allowed the bail application made by the Appellant.

It should be known that denying bail to a person who is otherwise entitled by law constitutes a violation of his basic right to personal freedom as enshrined in our Constitution. It is even further appalling that the denial is gauged on non-existing charges. I am also informed by the records that when the trial court was called to consider the application for bail on 15/08/2023, the Appellant had already filed a Notice of Appeal to the Court of Appeal. The dictates of law, as I earlier propounded, is for the

lower courts to down their tools, which in my view, includes non-interference of the status quo of the parties.

As the Appellant was a free person when he appeared before this Court in Civil Appeal No. 160 of 2022, he should not have been committed to remand on the guise of an interpretation of a to be impugned decision of this Court. I therefore also sustain the 2nd ground of appeal and hold that the trial court erred in not admitting the Appellant to bail.

For avoidance of doubts, there is nothing that prevents the DPP from resubstituting charges against the Appellant once the Court of Appeal determines the Appellant's intended appeal against the decision of this Court in Criminal Appeal No. 160 of 2022. That is his unfettered discretion provided that the evidence at his disposal supports such new charges. However, as per the status quo, the charge pending against the Appellant allows bail. Further, the order of trial de novo cannot be implemented while the said intended appeal remains outstanding.

In light of the foregoing, it is the holding of this Court that the Appellant's appeal has merits. It is therefore allowed.

I was asked by Counsel for the Appellant to invoke powers vested on me by Section 30 of the Magistrate Courts Act, Cap 11 and Section 7 of the

Judicature and Application of Laws Act, Cap. 358 (RE 2019) to step into the shoes of the trial court and set conditions for the Appellant's bail. Ordinarily, I would be compelled to refer back the matter to the trial court for it to admit and set conditions for the Appellant's bail. However, as the records of the trial court are with me and given the length of time that the Appellant has been languishing in gaol, pursuant to Section 373(1)(b) of the CPA, I hereby invoke my revisional powers to revise the proceedings of the trial court by setting aside the order of denying bail to the Appellant and committing him to remand prison. I further step into the shoes of the trial court and proceed to grant bail to the Appellant on the following conditions:

1. The Appellant, Peter Michael Madeleka, to be released on bail by signing a bond of shillings One Million only (TZS 1,000,000/=);
2. The Appellant shall have one surety bearing a proper identification from a reputable Institution. The surety to sign a bond of shillings One Million only (TZS 1,000,000/=).

The surety to be approved by the Deputy Registrar.

Order accordingly.

Y.B. Masara

JUDGE

8th September 2023