

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

CRIMINAL APPEAL NO. 116 OF 2022

*(Originating from Criminal Case No. 10 of 2022 of the Resident Magistrates court of
Manyara at Babati)*

DIRECTOR OF PUBLIC PROSECUTIONS (DPP.)..... APPELLANT

VERSUS

ABDUL MAJID AND 12 OTHERS..... RESPONDENTS

REVISIONAL ORDER

(Made u/s. 373 of CPA)

02/11/2023 & 21/12/2023

GWAE, J

In the Resident Magistrate's Court of Manyara at Babati, the appellant, Director of Public Prosecutions (DPP) instituted the against the accused persons namely; Abdul Majid, Selemon Wolday, Adino Wolroro, abrahman Malaki, David Kabemo, Daraba Dullah, Mahamush Demeka, Salumu Lambros, Manrasa Abiya, Bugala Fikire, Madamu Zalaka, Misgano Tamaske and Damaka Tamaskel now respondents in this appeal. The offencet against the respondents, was the of offence of unlawful entering within the United Republic of Tanzania c/s 45 (1) (i) of the Immigration Act, Cap 54, R. E. 2016

All respondents when arraigned to the charge on the 5th ` May 2022 pleaded guilty to the offence and they were eventually convicted and sentenced to the term of thirty days imprisonment or pay a fine of five hundred shilling (Tshs.500,000/)=each. As revealed in the court file, none of the respondent paid fined.

Subsequent to the trial court's conviction and sentence, one Adam Francis Kilawe wrote a letter dated 13th May 2022 addressed to the RM i/c regarding the Motor Vehicle with Registration No. 352 BYY make Toyota Land Cruiser. On the 16th day of May 2022 on which the trial court passed the sentence against the respondent, the order refusing or staying forfeiture of the said motor vehicle allegedly used to carry the respondents was issued. In that order, it was also ordered that, the said Adam Kilawe be availed an opportunity to address or show cause as to why the motor vehicle should not be forfeited.

Upon hearing the application by Mr. Kiwale who under the service of one God lista, the learned advocate and the response by the appellant's representative, Mr. Mwigole the learned senior state attorney, it was ruled in favour of the said Adam Kiwale. The impugned order vide the trial court's ruling delivered on 3rd June 2022 thereof was to the effect that, the prosecution failed to prove that, the said motor vehicle was used as an instrument for the commission of the offence. Thus, it was ordered

that, the motor vehicle be returned to the owner, Adam F. Kilawe upon production of relevant genuine documents.

Aggrieved by the ruling of the Resident Magistrate's Court, the appellant has now preferred this appeal to the court under the following grounds of appeal;-

1. That, the trial magistrate erred in law and fact to receive the letter of the stranger to the file criminal trial and order him an audience
2. That, the trial magistrate erred in law and fact to order return of the motor vehicle in question used in the commission of the crimes to a person who was a stranger to the case and who was not an innocent over the same
3. That, the trial magistrate erred in law and fact, the trial court erred in law and facts to analyse facts which were not stated in the case by the prosecution
4. That, the trial magistrate erred in law and fact for failure to order forfeiture of the motor vehicle of the commission for transporting illegal migrants while on the same time convicting the respondents (illegal immigrants) who unequivocally pleaded guilty to have travelled within the motor vehicle by using the said motor vehicle
5. The trial magistrate erred in law and fact by misdirecting himself in convicting offence charged while on other hand claimed he was not satisfied with narrated facts by the prosecutions

6. That, the trial court erred in law and fact to deliver two drawn orders of returning of the motor vehicles Registration Number 352 BYY which contradict each other
7. The trial magistrate erred in law and fact for failure to order forfeiture of the said motor vehicle used in the commission of the crime for transporting the illegal migrants to the Government without considering the efforts of the prosecution in finding the owner of it one Atish Satish Chohan who was nowhere to be found.
8. The trial magistrate erred in law and fact for his failure to order forfeiture of the motor vehicle in question instead ordered return of the same to the said Adam Francis Kilawe who did not show cause on how the motor vehicle was dispossessed from his purporting custody and later be found in the custody of the police station and Orksiment for allegation of being used in transporting illegal migrants

Before the court appellant is enjoying the legal services of Ms. Alice Mtenga and Lilian Kowelo, both the learned state attorneys who informed the court that, they were just holding brief of the state Attorney's Office of Manyara Region whilst one Adam Francis Kilawe appeared in person though not named as among the respondents. After the prayer made by the said Kilawe of arguing this appeal by of written submission, the court granted his prayer and fixed the dated for presentation of the parties' submission.

As I was preparing the judgment particularly when recording the names of the respondents, I came to learn that, the name of the one who was handed over the motor vehicle was not enlisted in her Memorandum of Appeal yet the appellant is challenging the competence of the order returning the motor vehicle to him. In that regard, the appellant is thus requested to address the court of the competence before the court and validity of the order pertaining with written submission for and against the appeal.

I am of the firm view that, the order made by the court (**Gwae, J**) on the 2nd November 2023 was improper since the one who advanced the prayer was not a party to the appeal at hand. Therefore, the said Adam Francis Kiwale has no audience to address the court.

More so, there was no proof that on the part of the appellant if the respondents were duly served with a copy of this appeal. Proceeding with the hearing of the appeal in the absence of the respondents and absence of proof of service constitutes a violation of fundamental right to be heard to the respondents.

Similarly, proceeding with the hearing and pronouncement of judgment in the presence of the one whose favour was entered by the trial court is equal to proceeding with the hearing with a person who is not party to such proceeding.

I have also considered the fact that, the said Ada Kilawe merely wrote a letter to the Resident Magistrate i/c and that is when the trial magistrate was made aware of the interested person (Adam Kilawe) in the property/motor vehicle. The Appellant through her representative applied for forfeiture in terms of provisions of section 351 of CPA, section 46 (1) of the Immigration Act, and Proceeds of Crimes Act, Cap 246, Revised Edition, 2022.

Looking at the nature of the offence against the respondents and the applied forfeiture order by Mr. Mwigole, Senior State Attorney followed by the letter written by the said Adam, I find it proper, as argued by the Mr. Mwegole, to invoke revisionary power vested to me under section 373 (1) of CPA. I think it is appropriate to invoke the court's revision power to revise the trial court proceedings, decision and its ancillary orders so that justice may be occasioned to both sides. In the premises, I hereby make the followings orders;

1. That, the order of the Resident Magistrate's Court of Manyara at Babati dated 13th June 2022 is hereby revised and set aside
2. That, the interested party in the motor vehicle with registration No. 352 BYY make Toyota Land Cruiser is granted leave as per section 16 (5) the Proceeds of Crime Act. Thus, he or she may

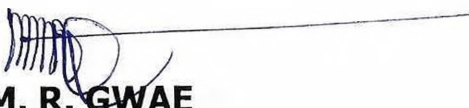
formally apply to the trial court pursuant to subsection (6) of section 16 of the Proceeds of crime Act and enable the DPP to properly respond if she so desires.

3. That, the interested party one Adam Francis Kilawe is given thirty (30) days from the date of this revisional order to formally apply to the RM's Court at Manyara against the DPP's application for forfeiture order.
4. That, the parties including the said Adam Kilawe who is present shall be availed with the revisional order so that they may take necessary orders

It is so ordered.

DATED at ARUSHA this 21st December 2023




M. R. GWAE
JUDGE