

IN THE HIGH COURT OF TANZANIA

AT SONGEA

CRIMINAL REVISION NO. 10 OF 2020

(Originating from Tunduru District Court in Criminal Case No. 111/2020)

THE REPUBLIC.....ORIGINAL PROSECUTION

VERSUS

ASIA ATHUMANI@SAID ORIGINAL ACCUSED

RULING

Date of Last Order: 30/11/2020

Date of Ruling: 7/12/2020

BEFORE: S.C. MOSHI, J.:

This ruling is pursuant to a revision undertaken *suo motto* to consider the irregularities which were committed by the trial court, they include non compliance with section 214 (1) of the Criminal Procedure Act Cap. 20 R.E 2019 and legality of the verdict in Criminal case Number 111 of 2019 which was determined in the District Court of Tunduru at Tunduru.

The accused was charged with causing grievous harm contrary to section 225 of the Penal Code Cap. 16 R.E 2019. Upon conviction the trial court found the accused guilty as charged, it imposed a sentence of three years in jail.

The case was firstly assigned to ODIRA AMWORO, RM. On 13/6/2019 he heard prosecution witnesses number one (PW1- Manka Mushi), prosecution witness two (PW2 - Eugen Emmanuel) and prosecution witness number three (PW3 - Eugen Emmanuel). Thereafter the case was heard by H.C. Kando, RM, however no reasons were given for take over. H. C. Kando, RM heard prosecution witness number four (PW4 - WP 8638 DC Linda) and a defence witness, Asia Athumani Said.

During the hearing, the accused appeared in person while the Republic was represented by Mr. Frank Chonja.

Mr. Chonja submitted that, section 214 (1) of the Criminal Procedure Act Cap. 20 R.E 2019 requires a successor Magistrates to assign reasons for taking over the matter. He cited the case of **Cletus S/O Mokioba @ Nyangita V. R**, High Court (Mwanza) Criminal Appeal No. 11 of 2020 at page 5 and 6 and **Cleopa Mchiwa Sospeter V. R**, Criminal Appeal No. 51 of 2019, Court of Appeal sitting at Dodoma.

He said that, this case was firstly heard by Odira Amworo, on 26/8/2020. Thereafter the matter proceeded with hearing before H.C.Kando. Mr. H. C. Kando did not comply with section 214 (1) of the Criminal Procedure Act Cap. 20 R.E 2019 as he did not give reasons for taking over the matter. He proposed that, the matter be returned for a retrial before another magistrate.

Regarding the sentence, Mr. Frank Chonja submitted that the trial court convicted the accused to serve a term of three years in prison. The case file was forwarded for sentence confirmation to this court. This was contrary to section 170 (1) (a) of the Criminal Procedure Act, Cap. 20 R.E 2019 which provides that the court should refer the case file to the High court for confirmation of sentence where the court has sentenced a sentence above five years. He said that, since in this case the trial court sentenced the accused to three years in jail it was within the powers of the court and the sentence was correct.

The accused had nothing to say.

As stated above section 214(1) of the Criminal Procedure Act Cap 20 R.E 2019 was not observed. It is apparent on the record that H.C Kando took over the case from Odira Amworo, RM however he did not give the reasons thereof.

In the case of **Abdi Masoud @ Iboma and 3 others V. R**, Criminal Appeal No. 116 of 2015 @Dodoma (Unreported), the Court of Appeal held thus: -

"In our view under section 214 of the CPA, it is necessary to record the reasons for reassignment or change of trial Magistrate. It is a requirement of the law and has to be complied with. It is a prerequisite 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 the case."

Similarly, in the case of **Hatwib Salim V. R**, Criminal Appeal 372 of 2016 at Bukoba, it was held thus: -

"The requirement to state reasons of change of magistrate from one magistrate to another is very important issue to be considered. This is for the reasons of controlling and avoiding the danger of some mischievous person who might be able to access the file and do issues not in accordance with the procedures or requirements of the law."

Therefore, this irregularity goes to the root of the case as it touches the issue of jurisdiction.

The other issue is about sentencing power of the trial Magistrate, Mr. Frank submitted that there was no need for the trial Magistrate to forward the case file for confirmation as he has power to sentence the accused up to five years in jail. With due respect, this is not correct.

Under section 170 (1) of the Criminal Procedure Act Cap. 20 R.E 2019 the maximum sentence which may be imposed by subordinate courts is five years imprisonment. However, proviso to section 170 (2) allows a Senior Resident Magistrate to pass a sentence of imprisonment

for a term not exceeding five years without referring for confirmation to a High court Judge. The section reads that: -

"A subordinate court may, in the cases in which such sentences are authorized by law, pass any of the following sentences-

- (a) Imprisonment for a term not exceeding five years, save that where a court convicts a person of offence specified in any of the schedules to the Minimum Sentences Act which it has jurisdiction to hear, it shall have the jurisdiction to pass the minimum sentence of imprisonment;*
- (b) A fine not exceeding twenty million shillings*
- (c) Subject to the provisions of the Corporal Punishment Act, corporal punishment*
 - (2) Notwithstanding the provision of subsection (1)*
 - (a) A sentence of imprisonment*
 - (i) for a scheduled offence as defined in subsection 5, which exceeds the minimum term of imprisonment prescribed in respect of it by the Minimum Sentences Act;*
 - (ii) for any other offence, which exceeds twelve months [Emphasis provided]***
 - (b) a sentence of a fine or for a payment of money (other than payment of compensation under the Minimum Sentences Act, which exceeds six thousand shillings,*

Shall not be carried into effect, executed or levied until the record of the case, or certified copy of it, has been transmitted to the High court and the sentence or order has been confirmed by a judge.

Provided that this section shall not apply in respect of any sentence passed by a senior Resident Magistrate of any grade or rank."

The above position was also stated in the case of **Alexander Mpelemba V. R.**, (1990) TLR 2 and the case of **Republic V. Abdallah Selemani** (1983) TLR 215.

Back to the case at hand, the trial Magistrate is not a senior Resident Magistrate, the offence which the accused was charged with is not a scheduled one. Therefore, his sentencing powers are limited to imprisonment term for a period not exceeding twelve months otherwise if there are any aggravating factors, he was duty bound to forward the file as he did to this court for the sentence to be confirmed.

That said, I hereby revise the case by quashing the proceedings which were conducted by successor magistrate, H.C. Kando i.e from 26 - 8 - 2020 to the end. I further set aside the sentence and any other order made therefrom. I order that the case be tried *denovo* before another magistrate with a competent jurisdiction. Meanwhile the appellant to remain in custody while awaiting a retrial.

The case file should be remitted to the trial court forthwith.

It is so ordered.

Right of Appeal is explained.




S.C. MOSHI

JUDGE

7/12/2020