

DECIDED
20 September 2012

1 IN THE COURT OF APPEAL OF TANZANIA AT ARUSHA ARS. CRIMINAL REVISION NO. 1 OF
2010 (CORAM: KIMARO, J.A., MBAROUK, J.A., And MASSATI, J.A.) THE REPUBLIC
..... PROSECUTOR VERSUS TENGESI NDIOTI
..... ACCUSED · {Revision from the Order of the High Court of
Tanzania at Arusha) {Chocha, J.) dated the 31 st day of October, 2008 in Criminal Sessions Case
No. 74 of 2003 RULING OF THE COURT rn th & 20th September, 2012 MBAROUK, J.A.: By invoking
the powers conferred upon us under Section 4

(3) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002, the Court suo motu called for revision of the order of the High Court of Tanzania at Arusha (Chocha, J.) dated 31 st October, 2008 in Criminal Sessions Case No. 74 of 2003. 1 A brief historical background which culminated to this revision is as follows:- Before the District Court of Arusha, at Arusha, committal proceedings were conducted in Criminal Case No. 427 of 2003. At the end of committal proceedings, on 22/7/2004, the said subordinate court ordered as follows:- "Court:- Before your trial of the High Court you are entitled to get a copy of record of committal proceeding without custody until the (sic) called by the High Court." Thereafter, Criminal Session Case No. 74 of 2003 was opened at the High Court of Tanzania at Arusha to proceed with the hearing of the trial of the murder case. Shangwa, J. took the plea to the stage of preliminary hearing. The case was then transferred to Chocha, J. and on 31/10/2008 he remarked as follows:- "During the pre-conference between the State Attorney Mr. Ngole for Republic, the defence counsel Mr. Kwagilwa and myself, we unanimously agreed that the accused 2 was not properly before us, as he had not been committed pending trial before the High Court The only question we addressed was whether the magistrate's remarks consawredsuffldentorderofcommftment of the accused pending trial before the High Court in terms of Section 246 (1) of the Criminal Procedure Act " In the end, Chocha, J. remarked as follows:- "..... Since the plea was conducted by my fellow Judge, I lack powers to interfere in the same. I order that this record be forwarded to the Court of Appeal as soon 3 ,,, as convenience may warrant for the necessary guidance. " At the hearing of this revision, Ms. Eliainenyi Njiro, the learned State Attorney represented the Prosecutor/Republic while Mr. Joseph Sikawa, learned advocate represented the accused person . . 1 . Ms. Njiro submitted that the accused was improperly committed for trial. She urged us to find that Section 246 (1) of the Criminal Procedure Act (CPA), was not complied

with. Ms. Njiro further submitted that the order of the subordinate court lacked specific wording of committing the proceedings to the High Court for trial. For that omission, the learned State Attorney i f further urged us to find that the accused was not properly before the High Court. In support of her argument, she cited to us the decision of this Court in the case of The Republic vs Dodoli Kapufi and Paston Tusaliike, Criminal Revision No. 1 of 2008 - (CAT) Mbeya, (unreported). For those reasons, Ms. Njiro asked 4 the Court to invoke Section 4 (3) of the Appellate Jurisdiction Act and order the case to be remitted back to the subordinate court so that a proper order of committal to be issued and nullify all the proceedings conducted before the High Court. On his part, Mr. Sikawa submitted that, he was in total agreement with what was submitted by the learned State Attorney to the effect that the subordinate court contravened the I requirements of Section 246 (1) of the CPA. He said, the omission has to be rectified before the case is referred to the High Court for trial. Mr. Sikawa then urged us to send the file back to the .- subordinate court and nullify the proceedings which were before the High Court. He further prayed for the order of speedy trial, as it is a long time case. Section 246 (1) of the CPA stipulates as follows:- "246 (1) Upon receipt of the copy of the information and the notice/ the 5 . subordinate court shall summon the accused person from remand prison or, if not yet arreste~ order his arrest and appearance before it and deliver to him or to his counsel a copy of the information · and notice of trial delivered to it under sub-section (7) of section 245 and commit him for trial by the court and the committal order shall be sufficient authority for the person in charge of the remand prison concerned to remove the accused person from prison on the specified date and to facilitate his appearance before the court. " In emphasizing the importance of compliance with the requirements stated in Section 246 (1) of the CPA, this Court in the case of Republic vs Asafu Tumwine, Criminal Revision No. 1 of 2006 (unreported) stated that:- 6 "It is only a specific order of committal at the end of this exercise [i.e. committal proceedings] which formally and properly submits an accused to the Jurisdiction of the High Court " (Also see, Republic vs Dodoli Kapufi and Another (supra)). In the instant case, we agree with both, the learned State Attorney and Mr. Sikawa that the accused was not properly before the High Court because there was no specific order of committal at the end of the committal proceedings by the subordinate court. We are of the considered opinion that, the . requirements under Section 246 (1) of the CPA have to be strictly complied with before the subordinate court when referring the case for trial before the High Court in committal proceeding cases. In the absence of such a specific order of committal all the proceedings in the High Court in respect of the plea and preliminary hearing become a nullity. 7 For the anomaly we have found herein above, we invoke Section 4 (3) of the Appellate Jurisdiction Act and nullify all the proceedings before the High Court and order the file to be remitted back to the subordinate court for specific order of committal to be issued. For the interests of justice, we also order that as this is an old case, the trial should be conducted speedily. It is so ordered. DATED at ARUSHA this 19th day of September, 2012. N. P. KIMARO JUSTICE OF APPEAL M.S. MBAROUK JUSTICE OF APPEAL S. A. MASSATI JUSTICE OF APPEAL y of the original.

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