

TANZANIA / JUDGMENT

Criminal Appeal No

COURT
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IN THE COURT OF APPEAL OF TANZANIA AT MWANZA (CORAM: KOROSSO. 3.A.. KENTE, J.A., And MGONYA. J.A.^ CRIMINAL APPEAL NO. 260 OF 2024 ELIAS DANIEL @DOTTO 1st APPELLANT MUSSA PAULO @MANYANZA2nd APPELLANT VERSUS THE REPUBLIC..... RESPONDENT (Appeal from the decision of the High Court of Tanzania at Mwanza) (Manvanda. J.^ dated the 04th day of November, 2021 in Criminal Sessions Case No. 61 of 2016 JUDGMENT OF THE COURT 25th November & 4th December, 2024 KOROSSO. J.A.: In the High Court of Tanzania sitting at Mwanza, the appellants Elias Daniel @Dotto and Mussa Paulo @Manyanza were convicted of the offence of Murder contrary to sections 196 and 197 of the Penal Code in Criminal Sessions Case No. 61 of 2016. Upon conviction, they were accordingly sentenced to death by hanging. It was the prosecution case that on 16/3/2015, at about 20.00 hours, at Mnekezi Village within the District and Region of Geita, the appellants together with one Charles i Daniel (who was acquitted by the trial court and thus not subject to this appeal), jointly and together, did murder one Daniel Kayebe. In proving the charge against the appellants, the prosecution side fronted seven witnesses and five documentary exhibits. In defence, each appellant categorically denied involvement in the offence charged and expounded on the circumstances of their arrest. Upon being convicted, aggrieved by the trial court's decision on 5/3/2023, the appellants lodged a joint memorandum of appeal with three grounds. Again, on 20/11/2014, in terms of rule 73(2) of the Tanzania Court of Appeal Rules, 2009 (the Rules), through their counsel, filed a joint supplementary memorandum of appeal premised on four grounds in substitution of the initially filed memorandum of appeal. Nevertheless, for reasons that will come to light in the course of this judgment, we find it prudent not to reproduce the grounds of appeal at this juncture. When the appeal was called for hearing on 25/11/2024, Messrs. Emmanuel John and Mr. Geoffrey Reuben Kishasha, learned advocates, entered appearance for the 1st and 2nd appellants respectively, whereas, Mr. Robert Magige, leaned Senior State Attorney, represented the respondent Republic. Before the hearing of the appeal on merit commenced, an issue arose on the propriety of the committal proceedings conducted by the 2 District Court of Chato, sitting at Chato in P.I Case No. 09 of 2015 on 16/5/2016. When parties were called upon to address the Court on this issue, Mr. Magige submitted that the record of appeal, reveals that after the District Court of Chato issued a committal order on 16/5/2016, the order was subsequently vacated by the High Court as stated above during the conduct of Plea Taking and Preliminary Hearing on 5/5/2017. The High Court further ordered for the case file to

be remitted back to the Chato District Court for proper committal order for reason that they were improper, with an order for the committing court to issue a proper committal order. According to the learned Senior State Attorney, thereafter, there is nothing on record to show that, the committing court, executed the order of the High Court. The record only shows that on 23/5/2017, the High Court (Bukuku, J.) proceeded with a Preliminary Hearing for the appellants and nothing can be traced to show that there was compliance of the previous High Court order. It was thus his contention, that in the absence of any other committal order apart from the one on record, which was vacated by the High Court, there is no committal order for the appellants to be tried in respect of the information filed against them. He contended further that the stated infractions vitiated the trial proceedings conducted against the appellants as the High Court lacked jurisdiction to proceed with the trial. As a result, Mr. Magige implored us to invoke our revisional powers and nullify the trial proceedings of the High Court, quash the conviction and set aside the imposed sentence, and remit back the file to the High Court with an order for onward transmission to the District Court for compliance with its order of 5/5/2017. He prayed that in the meantime, in the interest of justice, the appellants should stay in custody. On his part, the learned counsel for the 1st appellant appreciated the concession of the pertinent anomaly in the committal proceedings and trial of the appellants as alluded to by the learned Senior State Attorney. Mr. John further expounded his support for the remedy and way forward proposed by the learned Senior State Attorney, in the obtaining circumstances. Mr. Kishosha on the other hand also supported the submissions and prayers by the learned Senior State Attorney. Having heard submissions from the learned counsel for the 1st and 2nd appellants and the learned Senior State Attorney on the purported anomaly in the committal proceedings of the appellants, the germane issue before us for determination is whether the appellants were duly committed for trial in the High Court in line with the order of the High Court of 5/5/2017. It states: "O rder: (i) The case file be rem itted back to the Chato D istrict Court fo r proper com m ittal order to be issued. (ii) the com m ittal order o f the D istrict Court o f Chato dated 16/5/2016 is hereby vacated. (Hi) The P I having been properly made, le t the Prelim inary Hearing be scheduled during this session ; if possible." Having scrutinized the record of appeal, certainly, after the issuance of the said order, the record does not show the District Court of Chato's compliance with the High Court order nor is there any evidence revealing that there were any committal proceedings conducted afresh by the District Court of Chato concerning the case. The record reveals further that on 23/5/2017, the Preliminary Hearing for Criminal Sessions Case No. 61 of 2016, the appellants being the 2nd and 3rd accused persons was conducted before Bukuku J. Subsequently, on 7/10/2021, the appellants' trial began and proceeded to its conclusion, where the appellants were convicted and sentenced as stated hereinabove. It is against the above background that we find it pertinent to reiterate what we stated in the case of *Malocha Kalinji @Venance and Another v. Director of Public Prosecutions*, (Criminal Appeal No 238 of 2019) [2023] TZCA 17717 (4th October 2023, TANZLII), that the law requires that in serious offences including murder, committal proceedings should be conducted by an Inquiry Court (the District Court or Court of Resident Magistrates') before an accused person is sent to the High Court for trial. Section 2 of the Criminal Procedure Act, Cap 20 (CPA) stipulates, committal proceedings: "means proceedings held by a subordinate court with a view to the com m ittal o f an accused

person to the High Court." As stated earlier, the envisaged subordinate court is enjoined to oversee committal proceedings from the time the suspect is charged or information is filed until committal for trial to the High Court for determination of the accusation leveled against him/her by the prosecution is effected. Committal proceedings provide an opportunity for an accused person to understand the nature and substance of the charge and evidence against him since it is in those proceedings where information and statements of prosecution witnesses and documentary evidence intended to be relied upon at the trial are read and made available for scrutiny. Thereafter, the statements and documents are availed to the accused for use at the trial. We find no need at this juncture to reexamine the validity of the reasons expounded by the High Court for the order for the recommittal of the appellants by the District Court of Chato. However, it is important to discuss the propriety of the said order under the circumstances. This is because, after the order committing the appellants for trial by the High Court, the committing magistrate could no longer re-open the file and review or revise the same order of committal using the same PI number as he was invariably, *functus officio*. Essentially, since Criminal Sessions Case No. 61 of 2016, before the High Court for Preliminary Hearing arose from committal proceedings of PI No. 09/2015, it follows that, even with the order for recommittal, the case number before the High Court remained active. It follows then, that the conduct of fresh committal proceedings as ordered, would have been legally improper under the circumstances. We are of the view that, taking all the factors before us into consideration, it was not legally sound for the High Court to order fresh committal proceedings while the proceedings in the High Court in respect of the initial committal proceedings still subsisted (see, the case of *Republic v. Elias Michael @ Luhiye and 3 Others*, (Criminal Revision No. 2 of 2018) [2020] TZCA 1863 (23rd November 2020, TANZLII)). It is also important to take account of the fact that under the circumstances, proceeding to conduct fresh committal proceedings would have been improper since it required the committing court to reopen and conduct fresh committal proceedings, in the same file where committal had already been ordered. Consequently, in the instant case, as also conceded by counsel from both parties, in light of the above, the trial proceedings related to Criminal Sessions Case No. 61 of 2016, were indeed, a nullity since they emanated from committal proceedings which, having been nullified were no longer valid. On account of what we have observed above, and being satisfied that there was impropriety in the committal proceedings related to the appellants in this case, we invoke the revisional powers of the Court under rule 4 (2) of the Rules to revise and nullify the committal proceedings of 16/05/2016 in PI Case No. 09 of 2015 in the District Court of Chato and those of the High Court of Tanzania at Mwanza in Criminal Sessions No. 61 of 2016, quash convictions and set aside the sentences meted to the appellants. In consequence, we remit the case file to the District Court of Chato and direct that fresh committal proceedings in respect of the offence charged against the appellants be instituted having regard to the applicable laws. We further order that the conduct of committal proceedings for the appellants and the foregoing proceedings at the High Court be expedited. Meanwhile, the appellants shall remain in custody pending the holding of fresh committal proceedings and their ultimate trial before the High Court. DATED at MWANZA this 3rd day of December, 2024. W. B. KOROSSO JUSTICE OF APPEAL P. M. KENTE JUSTICE OF APPEAL L. E. MGONYA JUSTICE OF APPEAL The Judgment delivered this 4th day of December, 2024 in the

presence of Mr. Emmanuel John, learned Counsel for the 1st appellant, Mr. Godfrey Reuben Kishosha, learned Counsel for the 2nd appellant and Mr. Sileo Leonce Mazullah, learned State Attorney for certified a true copy of the original. L. KALEGEYA TY REGISTRAR RT OF APPEAL

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