

TANZANIA / JUDGMENT

jackson protaz vs republic

2019 tzca 513 3 december 2019

COURT
TZCADECIDED
3 December 2019

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IN THE COURT OF APPEAL OF TANZANIA AT BUKOBA (CORAM: MMILLA , J.A.. MZIRAY. J.A..
And KWARIKO, J.A.^ CRIMINAL APPEAL NO. 442 OF 2018 JACKSON
PROTAZ.....APPELLANT VERSUS THE
REPUBLIC..... RESPONDENT (Appeal from the decision
of the Resident Magistrate's Court of Kagera (Ext. Jurisdiction) held at Karagwe) (Kahvoza, PRM -
Ext. Jurisdiction') dated the 12nd day of November, 2018 in Criminal Sessions Case No. 53 of 2017
RULING OF THE COURT 3rd December, 2019 KWARIKO, 3.A.: When the appeal was called on for
hearing, Mr. Josephat S. Rweyemamu, learned advocate, appeared for the appellant while Ms.
Suzan Masule, learned State Attorney, represented the respondent/Republic. Before the hearing
commenced in earnest, we wanted to satisfy ourselves whether the order of the High Court dated
11/9/2016 was complied with. Earlier, on that date the defence counsel had informed the Court
that, the defence was intending, at the trial, to raise the defence of insanity. As such it implored
the Court to make an order for the appellant to be sent to a mental hospital for examination of his
mental status at the time he was alleged to have committed the offence of murder. The
prosecution did not object the prayer. The High Court granted the prayer and in terms of section
220(1) of the Criminal Procedure Act [CAP 20 R.E 2002], it ordered the appellant to be sent to a
mental hospital for examination of his mental status at the time he was alleged to have
committed the offence. The counsel for the parties agreed that the High Court order was not
complied with and this matter was not raised during the appellant's trial. However, upon perusal
of the Court record, we found the medical officer's report from Isanga Institution dated 5/1/2018
and received by the High Court on 19/2/2018. This report was nevertheless not considered by the
High Court in accordance with the law. It is our considered view that, following that omission,
there was no fair trial. Thus, invoking our revisional powers under section 4(2) of the Appellate
Jurisdiction Act [CAP 141 R.E. 2002], we hereby quash the proceedings, judgment and conviction
by the trial Court and set aside the sentence against the appellant. We order a trial of the
appellant denovo before a different judge where the medical report will be considered. We
further direct the High Court to hold trial expeditely in this regard because the appellant had
been in remand prison since January, 2015 and a prisoner from November, 2018. Meanwhile, the
appellant shall remain in custody waiting his retrial. It is so ordered. DATED at BUKOBA this 3rd
day of December, 2019 B. M. MMILLA JUSTICE OF APPEAL R. E. MZIRAY JUSTICE OF APPEAL M.

A. KWARIKO JUSTICE OF APPEAL I certify that this is a true copy of the original. B. A. MPEPO
DEPUTY REGISTRAR COURT OF APPEAL

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