

TANZANIA / JUDGMENT

republic vs jumanne mahende wanganyi 2022 tzhc 9807 31 may 2022

COURT
TZHCDECIDED
31 May 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY
OF MWANZA AT MWANZA CRIMINAL SESSIONS CASE NO. 131 OF 2017 REPUBLIC VERSUS
JUMANNE MAHENDE WANG'ANYI

RULING

30th & 31st May, 2022 ROBERT, J:- This matter came up for hearing before me following an order for a fresh trial made by the Court of Appeal in Criminal Appeal No. 204 of 2020. At the outset, the learned counsel for the accused, Mr. Peter Kibatata, submitted that the proceedings of this case having been nullified by the Court of Appeal, this case needs to start afresh by plea taking and preliminary hearing before calling witnesses to testify. He expounded that, prior to an order directing for the case to be tried afresh the Court of Appeal made a finding that the High Court Proceedings were vitiated and invoked its revisional powers to nullify the proceedings and 1 judgment of the High Court, quashed conviction and set aside the sentence thereof. He argued that, proceedings of the High Court having been nullified, the trial of this case needs to commence from the start by plea taking and preliminary hearing before hearing of witnesses testimony. To support his argument, he made reference to the case of Hsu Chin Tai and another vs The Republic, Criminal Appeal No. 250 of 2012, CAT at Dar es salaam (unreported) at page 14 and 15 where the Court of Appeal decided that a trial commences when an accused person appears and pleads before a competent Court. In response, Ms. Dorcas Akyoo, learned Senior State Attorney, had a different view to that of Mr. Kibatata. She submitted that, the decision of the Court of Appeal which nullified the proceedings of this case resulted from an irregularity on summing up to assessors and the Court of Appeal decided that the case should be tried afresh by a different Judge and a new set of assessors. She maintained that, since under section 265 of the Criminal Procedure Act trials before the High Court are conducted with the aid of assessors when witnesses are called to testify, then an order by the Court of Appeal for a fresh trial with a new set of assessors was intended to start 2 from the stage where assessors form part of the Court Coram which is at the stage when witnesses are summoned to testify. She maintained further that, since issues related to the charge and preliminary hearing proceedings were not raised by parties or faulted by the Court of Appeal, they are not subject to the order for nullification and therefore there is no need to start the proceedings of this case at the level of plea taking. She argued that,

the case of Hsu Chin Tai (cited by counsel for the accused) is distinguishable from this case as the issue for determination in that case was related to the stage when the Court proceedings are said to be instituted in respect of the Economic cases and the consent of the Director of Public Prosecutions, which is a different subject from the present case. She maintained that, the objective of conducting preliminary hearings is to speed up trials. Therefore, since the preliminary hearing was already done in this case, the Court has no reason to go back but to continue with trial as ordered by the Court of Appeal. 3 In his brief rejoinder, Mr. Kibatata asked the Court to regard submissions by the Republic as personal views of the counsel for Republic as they lacked any legal backing. He maintained that section 265 of the Criminal Procedure Act is a directive provision. It has no any confusion with the decision of the Court of Appeal in respect of what needs to be done in a fresh trial. With regards to the argument that issues in respect of plea taking and preliminary hearing proceedings were not raised at the Court of Appeal, he maintained that this argument is misplaced because the Court of Appeal nullified all proceedings of the High Court and ordered for a fresh trial. Hence, the question for determination by this Court is where the High Court trial Commences. I have given my anxious and thoughtful consideration to the rival submissions of the parties. It is not disputed that the Court of Appeal ordered the case against the accused to be tried afresh after nullifying the proceedings and Judgment of this Court. The question for determination is whether an order to nullify the Proceedings and judgment of the High Court had the effect of rendering null and void all proceedings of the High Court 4 including the preliminary hearing so as to require a fresh retrial starting from plea taking. This Court understands that, where the proceedings of the Court are nullified by a superior Court and an order for a fresh trial is made, unless the order is qualified, the whole proceedings of the case including the preliminary hearing becomes null and void and the case should be retried as if no trial whatsoever had been held in the first instance. These views are fortified by the decision of the Court of Appeal in the case of Yohana Musa Makubi and another versus the Republic, Criminal Appeal No.556 of 2015, CAT, Mwanza (unreported) at page 13 where the Court of Appeal having nullified and quashed the proceedings and judgment of the High Court decided to qualify its order so as to salvage the proceedings of the High Court in respect of the Preliminary hearing because they were not affected by the noted irregularity. That means, in my view, the proceedings of the High Court in respect of the preliminary hearing would equally be nullified and quashed in the absence of a clear order by the Court of Appeal to salvage the same. In the present case, an order to nullify the proceedings of the High Court was not qualified to salvage any part of the High Court proceedings. 5 This Court is also aware that, preliminary hearing proceedings are part and parcel of the trial case (see Shabani William vs The Republic, Criminal Appeal No. 358 of 2014, CAT at Dodoma (unreported) and Juma Lyamwiwe vs Republic, Criminal Appeal No. 42 of 2001). Hence, an order for a retrial of the case, unless directed otherwise, includes preliminary hearing proceedings. Therefore, an order for a fresh trial needs to start from the plea taking (See the case of Hsu Chin Tai (supra)). In the end, I find merit in the argument by the learned counsel for the accused. Consequently, I direct that this case starts afresh from the stage of plea taking and all the subsequent procedures under the relevant law will be followed accordingly. It is so ordered. 31/5/2022 6

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