

TANZANIA / JUDGMENT

omary juma vs republic

2016 tzca 947 20 april 2016

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20 April 2016

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IN THE COURT OF APPEAL OF TANZANIA AT PODOMA (CORAM: KILEO, J.A., ORIYO, J.A., And JUMA, J.A.^ CRIMINAL APPEAL NO. 413 OF 2015 OMARY JUMA..... APPELLANT VERSUS THE REPUBLIC..... RESPONDENT (Appeal from the decision of the Resident Magistrate Court of Dodoma at Dodoma) (Rutatinisibwa, Ext. J) Dated 29th day of January, 2013 in PRM Criminal Appeal No. 16 of 2012 JUDGMENT OF THE COURT 13th & 20th April, 2016 ORIYO, J.A.: On 19th April, 2010, the appellant was convicted of three separate counts of armed robbery contrary to sections 286 and 287A of the Penal Code, Cap 16 R.E. 2002; by the District Court of Kondoa. He was sentenced to suffer the statutory minimum sentence of thirty (30) years imprisonment on each count; to run concurrently. Being aggrieved by both the convictions and sentences, he appealed to the High Court in PRM Criminal Appeal No. 60 of 2009; after it was transferred to the Resident Magistrate's Court to be heard by R.I. Rutatinisibwa, Principal Resident Magistrate with Extended Jurisdiction, (PRM EJ); in terms of section 45(2) of the Magistrates Courts Act, hence this appeal before the Court. Before us the appellant fended for himself without the aid of legal counsel, whereas the respondent Republic had the services of Ms. Lina Magoma, learned State Attorney. Before the parties addressed us on their respective positions on the merits of the appeal or otherwise, the Court suo motu sought the views of the learned State Attorney on the apparent changes of trial magistrates during the trial without assigning any reasons thereof, in clear contravention to section 214(1) of the Criminal Procedure Act, (CPA). Ms. Magoma, learned State Attorney was forthright on this. She submitted that the omission to give reasons on the changes of trial magistrates, in contravention of section 214(1) of the CPA, is incurable. She invited the Court to revise the relevant proceedings under section 4 (2) of the Appellate Jurisdiction Act, (ADA). She prayed that in the event a retrial is ordered, the period the appellant has been in prison be taken into account. The appellant, being a lay person without legal knowledge merely informed the Court that in the event of retrial, Wilson, the trial having served a substantial part of the sentence and is of old age. Section 214 (1) of the CPA, provides: " (1) Where any magistrate, after having heard and recorded the whole or part o f or any part o f the evidence in any trial or conduct in whole or part any committal proceedings, is for any reason unable to complete the trial or the committal proceedings or he is unable to complete the trial or committal proceedings within a

reasonable time, another magistrate who has and exercises jurisdiction may take over and continue the trial or committal proceedings as the case may be and recorded by his predecessor and may, in the case of a trial and if he considers it necessary resubmit the witnesses and recommence the trial or the committal proceedings." [Emphasis added] Upon our perusal of the record, the following came to light: Preliminary hearing was conducted on 7/9/2009 before Y. Wilson, RM, who also took the testimonies of PW1, PW2, PW3, PW4, PW5 and made a Ruling that there was a prima facie case to answer and fixed a date for defence hearing. However, on 26/03/2010 when the matter came up for the defence case, Kato RM, took over without any reasons on record on why Wilson, RM, could not proceed with the trial. The hearing did not proceed as scheduled, on the ground that the accused was not feeling well. The same was adjourned to 9/4/2010 when Kato RM proceeded to hear the sole defence witness; the accused himself and thereafter composed the trial court's judgment which he delivered on 19/4/2010. We have taken note that Y. Wilson, RM, heard the testimonies of all five prosecution witnesses. There are no reasons given on record as to why the same Wilson, RM, could not hear the sole defence witness and compose the trial court's decision as dictated by section 214 (1) CPA; (also see Court's decision in Salumu Hussein v. Republic Criminal Appeal No. 3 of 2011 (unreported)). In the absence of the reasons for the change of the trial magistrate, the successor magistrate, was in our view, not vested with jurisdiction to proceed with the trial. Consequently, the proceedings before the successor magistrate without reasons being assigned for the takeover, are rendered a nullity; see Abdi Masoud @ Iboma and Others vs Republic, Criminal Appeal No, 115 of 2015 (unreported). As urged by the learned State Attorney, we are constrained to invoke our revisional powers, in terms of section 4(2), of the Appellate courts proceedings, including the sentence of thirty years imprisonment. In order to meet the justice of the case, we order that the matter be remitted to the trial court to proceed from where Wilson RM, ended. In the event he is no longer around, the reasons thereof are to be recorded by the successor magistrate. We further order that, the sentence served by then, to be deducted, in the event of conviction. DATED at DODOMA this 18th day of April, 2016. E. A. KILEO JUSTICE OF APPEAL K. K. ORIYO JUSTICE OF APPEAL I. H. JUMA JUSTICE OF APPEAL I certify that this is a true copy of the original. 5

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Prepared on 14 October 2026 · Esheria