

TANZANIA / JUDGMENT

ramadhani mohamed another vs republic 2015 tzca 351 16 july 2015

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16 July 2015

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IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM" f CORAM: MBAROUK, J.A.,
ORIYO J.A., And JUMA, J.A.) CRIMINAL APPEAL NO. 59 OF 2011

1. RAMADHANI MOHAMED i
2. NDALU SELEMAN _ f APPELLANTS J VERSUS THFTUEPU
BLIC..... RESPONDENT (Appeal from the decision of the High
Court of Tanzania at Dar es Salaam) (Mruke, J.) Dated 22nd day of November, 2010 in
Criminal Appeal No. 188 of 2008 JUDGMENT OF THE COURT 8th & 16th July, 2015
MBAROUK, 3.A.: In the District Court of Temeke at Temeke the appellants and another not
subject of this appeal were jointly charged with two counts. The first count is conspiracy
contrary to section 284 of the Penal Code, Cap 16 Vol. 1 of the laws and the second count is
armed robbery contrary to i section 287A of the Penal Code. At the end of the trial their
colleague was acquitted, but they were convicted and sentenced to thirty (30)— years
imprisonment. They---- unsuccessfully appealed to the High Court, hence preferred this
second appeal. Before us, the appellants appeared— in person unrepresented. On the other
hand, the respondent/Republic was represented by Ms. Anita Sinare and Ms. Anna
Chimpaye, learned State Attorneys. At the hearing, we wanted to satisfy ourselves as to the
propriety of the proceedings conducted at the trial court. This was for the reason that the
requirements of section 214(1) of the Criminal Procedure Act, Cap. 20 R.E. 2002 (the CPA)
were not complied with. As the record shows initially the proceedings were conducted by
Nzota, SDM up to the stage where the prosecution's case was closed. Thereafter, without any
reason given at all, Ngasoma, PDM took charge of conducting the defence case and then
writing the judgment. We were of the view that, that was contrary to the requirements of
section 214(1) of the CPA. That prompted us to ask Ms. Sinare whether she had seen the
irregularity. She had not seen it, was her reaction to our question. She hastened to add that
such an irregularity is fatal and cannot be cured. For that reason, she urged us to order a re-
trial to enable the proceedings to be conducted properly before the _ trial court. On their
part, the appellants submitted that they are lay persons not conversant with legal
technicalities. They therefore left everything at the discretion and wisdom of the Court to
arrive at a just decision. To begin with, let us examine section 214(1) of the CPA, which

provides as follows:- "(1) Where any magistrate, after having heard and recorded the whole or part of 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 who exercises jurisdiction may take over and continue the trial or committal proceedings, as the case may be and the magistrate so taking over may act on the evidence or proceeding recorded by his predecessor and ___ may, in the case of a trial, and if he considers it necessary resummons the witnesses and recommence the trial or the committal." [Emphasis added]. The above quashed provision requires the successor Magistrate to give reasons why his predecessor could not have completed the trial. However, in the instant case, no reasons were given. In the recent decision of this Court in the case of Abdi Masoud @Iboma and Three others v, The Republic, Criminal Appeal No. 116 of 2015 (unreported) which quoted another decision of this Court in the case of Priscus Kimaro v. Republic, Criminal Appeal No. 301 of 2013 (unreported) it was stated as follows:-

".....where it is necessary to reassign a partly heard matter to another magistrate, the reason for the failure of the first magistrate to complete must be recorded. If that is not done, it must lead to chaos in the administration of justice. Anyone, for the personal reasons could just pick up any file deal with it to the detriment of justice. This must not be allowed." [Emphasis added]. As pointed out above, in this case, no reasons were laid to show as to why the predecessor magistrate could not have completed the trial. The end result of such failure is to find all such proceedings a nullity. In another recent decision, in the case of Adam Kitundu v. The Republic, Criminal Appeal No. 360 of 2014 (unreported) the Court stated as follows:- "In the absence of any such reasons, the successor magistrate lacked authority and jurisdiction to proceed with trial and consequently all such proceedings before him a nullity". To give more emphasis of the requirements of the provisions of section 214(1) of the CPA, this Court in the case of Abdi Masoud @ Iboma (supra) stated as follows: "In our view, under section 214(1) of the CPA it is necessary to record the reasons for or change — of—trial court magistrates. It is a requirement of the law and ~has to be complied with. It is prerequisite for the second magistrate's assumption of jurisdiction. If this not complied with, the successor magistrate would have no authority or jurisdiction to try the case." All said and done, we are constrained to exercise the powers of revision conferred upon us under section 4(2) of the Appellate Jurisdiction Act and revise and quash all the proceedings from the point where Ngasoma, PDM took over from Nzota, SDM together with all the High Court proceedings. In addition to that, we also set aside the sentences and give an order that the case be remitted back to the trial court for retrial beginning from the date the 6 prosecution closed their case and after a ruling which found the appellants with a case to answer. We further add that, if a new trial leads to a conviction, the time which has been served by the appellants in prison should be taken into account when the sentence is passed. Meanwhile, the appellants should be treated as remand prisoners pending reappearance before the trial court. It is so ordered. DATED at DAR ES SALAAM this 13th day of July, 2015. M. S. MBAROUK 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. SSI DEPI HSTRAR COURT b f APPEAL 7

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