

19980126 TZHC Arusha

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DECIDED
26 January 1998

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7. OF 1991 . . (cfe CRIMINAL CASE N0.103 OF. -\99q IN THE KIBAYA DISTRICT ,,,. ·coURI') . ~!·
u '· ' . . REPUBLIC o o o o o ~ ~.;goo~ o o ~ o o'o <~--j· ~ ·o o ~ ~ o o ·}APPELLA~ ,l VERSUS
BEilJEI)ICT JOUN MBERESORE AND 8 OTHERS.· · ~ ~ .~s~NfiENTS

JUDGMENT

! : i ! : ; , f . J • MKWA ~!A , JIJ DGE :- This is i.rr·App~al· which. has been preferred by the Director of Public Prosecutions i.'vho::is-'aggrieved by the dact;Lsion of the Kibaya District Court: (KAJOLEKA S.D.M; } granting the appli~ti;n. of BENEDICT JOHN M3BPJJSORE a:nd, :8 a-then, _ for transfer of their Criminal case (Cr~:c:a:se' N~. 103-6:E: 1996) to the Court of the Resident Magistrate at :Arushao At the hearing Mrs.; Ntilatwa, the learne~. State Attorney, appeared on behalf of the Appellant/Republic, . ' while Mr~ Makange, learned coun~el, repliedent aii _the nine Respondents just as he had done a.t the:-tria:l· in the .lower Court. It is coinmori~ gro~a~'.that the, lower/trial Court had granted. tite appli~tiiDn fdf'ktransferring th~::~se pur~rtedly ~d.er the . : provisions of 'sed°b-ioiil 190· (b) of the Criminal Procedure Act, 1985 .. It can also be gear€::i. f'rom the proeedings and~he Ruling of the lower Court that:the :application was 9 by.and large, granted for the convinienceiof the accused persons who .had engaged the services of Mre Makan~e, l*arrted ..advocate, who is based/resides and works in ,/1.rusha Mu...l.incipality. It is not in dispute that· no regard had been' given· to costs that ,the· Republic will have to incur in s'e"curirig.the:httdance of their witnesses who are all residents of distant Villages in the Kibaya Distri't.. . . . 2 It is al~e evident and patently clear from the record of ~ proceedirigs of the l~wer Court that the Public Prosecutor had appraised the lower/trial Court of the inc;ni!uienci~ to the .;_ witnesses and the:cost element that would be invqlved should the Court grant the application sought by the Defence. But the trial magistrate was intrinsically oblivious to the afore said caution. ! ... ; -- ~~~-- .. _i , ... , ,. .. • :!;! :-: It is against this back ground that this appeal now lies before me for consideration and decisionG There is no doubt whatsoever in my mind that in the instant I case the learned magistrate did not fully appreciate tha Public Prosecutor's case in resisting the application for the transfer~ . !:.... : · --!.. : . . . Had he given it thoughtful. and judicio:l:t&·.considerat10n, it is . doubtful if he ~O'Mf, ~~~, ~i:io.:/E:~ the application, . ~ustwe must be seen to ~:e ~ci~::~ both to the . acc~sed.:. person~.~~ well as to the prosec1J~ion~.)fe_re it can not b~ said· to have been*

.... , so on the part of the Republic. Besides, it is the philosophy and spirit of our time and that it is quite in harmony with the realities and changed social and economic conditions and circumstances that advocates should also not confine themselves and their practice to the municipalities and towns only. They should extend their much needed services ... throughout the country indiscriminately. Lest, we shall be accused and convicted of creating an unprivileged class to the detriment of the people. It is the duty of the advocates to be stationed, namely in the municipalities and a few towns in this Republic. In the light of the foregoing, I am afraid, I do not accede to Mr. Makange's novel argument which is in support of the decision of the Court in granting the transfer of the case to the Resident Magistrate at Arusha. In the result, the appeal must be and accordingly is, allowed. The order granting the transfer is accordingly hereby set aside. As the interests of justice demand that there should be no dilatoriness in disposing of the matter which dates as far back as December 1996; it is hereby directed that the case be heard at the Kibaya District Court as prayed and that the hearing should resume at the earliest. Consequently the record of the lower Court is hereby remitted to the said Court without further order. It is so ordered.

JUDGE 2601.19980 J. J. Mkwawa, JUDGE JJM/nm

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Prepared on 28 October 2026 · Esheria