

TANZANIA / JUDGMENT

Ruling Mugisha

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1 January 1977

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA JUDICIARY BUKOBA SUB
REGISTRY AT BUKOBA ORIGINAL JURISDICTION CRIMINAL SESSIONS CASE NO. 87 OF 2025
THE REPUBLIC VERSUS MUGISHA JOHN ACCUSED
RULING OF THE COURT Date of last order/Ruling 07/03/2025 BEFORE: G.P.MALATA,J. This case
came for plea taking on 07/03/2025 and both parties appeared represented. The Republic
appeared through Ms. Elizabeth Twakazi learned State Attorney whereas accused who was also
present in Court appeared through Mr. Ibrahim Mswadick learned counsel. Upon information for
charge of murder being read over and explained to the accused in Kiswahili and asked to plead
thereto; the accused failed to understand the nature of charge he was called upon to plead
thereto. This was due to the fact that, he was unable to understand Kiswahili. As matter of law
and fact this Court decided to secure interpreter who is conversant with Kiswahili and Haya
capable of translating from Kiswahili to Haya local 1 language and vice versa. The court secured
one Joyce Oswald Kajuna as an interpreter. However, before we proceed for plea taking both
counsel for the Republic and defence raised concern to the Court. They stated that, having
observed that the accused do not understand Kiswahili save for Haya local language, then they
stated that, the proceedings by Missenyi District Court was conducted without aid of interpreter.
In other word, the accused did not understand properly the nature of proceedings in particular
committal proceedings which are very useful by the trial Court. In view thereof, they prayed that,
since the issue of failure to understand Kiswahili is continuation from the start of the proceeding
before Missenyi District Court then, it goes without saying that, similar problem occurred at the
subordinate Court. In that regard, the proceedings by Missenyi District Court were conducted in
the absence of accused as he was mentally absent-minded. On that strength, they asked this
Court to invoke its mandates and nullify the proceedings by Missenyi District Court and order for
recommittal with aid of interpreter as stated herein above. Pursuant to the point and concern
raised by counsels for both Republic and defence, this Court took time to read the proceeding by
Missenyi District Court and noted that, it was conducted without the aid of interpreter to
translate proceedings from Kiswahili to Haya local language which is well understood to the
accused. 2 It is also with no iota of doubt that, the issue of failure to understand the nature of
proceeding cannot be said to be new rather, it did not occur before the committing court as well.
This court cannot borrow the stand but to agree with the position opined by both counsels for the
Republic and defence. While aligning with opinion by both counsels, this court noted that; one,
the accused do not understand Kiswahili language save for Haya local language. Two, the issue of

failure to understand Kiswahili language is not occurring for the first time but for accused's entire life to date. Three, accused confirmed to this court that, he understands Haya local language only. Four, this Court is satisfied that, the accused understands Haya local language as he failed to answer questions from the court. Five, the proceedings by Missenyi District Court were conducted without aid of interpreter who could have translated proceedings from Kiswahili to Haya local language and vice versa to the accused and Court. Six, the accused was present at Missenyi District Court physically looking for what was transpiring without understanding it. On that strength, the proceedings by Missenyi District Court involved only Republic and the Court, thus leaving and denying the accused right to understand what was going on in court. Indeed, this case belongs to the parties not the court. As such, it is a duty of the court to ensure that, parties, in particular in criminal cases, understand the nature of the charge and proceedings leading to court's decision. Failure to avail such 3 right to the parties lead to denial of right to be heard which is a fundamental right under our Constitution. It is undeniably that, what happened before Missenyi District Court amounted to denial of right to be heard which is one of the Basic and Constitutional right under articles 13(6) (a) of the United Republic of Tanzania 1977. The article reads that, Kwa madhumuni ya kuhakikisha usawa mbele ya sheria, Mamlaka ya Nchi itaweka taratibu zinazofaa au zinazozingatia misingi kwamba:

- a) Wakati haki na wajibu wa mtu yeyote vinahitajika kufanyiwa uamuzi wa Mahakama au chombo kinginecho kinachohusika basi mtu huyo atakuwa na haki ya kupewa fursa ya kukata rufaa au kupata nafuu nyingine ya kisheria kutokana na maamuzi ya Mahakama au chombo hicho kinginecho kinachohisika". Besides, this court wishes to stress that, the proceedings before the committing Court is foundation of all subsequent proceedings before the trial Court and appellate Court as well. The Proceedings informs the parties on; one, nature of charge laid against the accused. Two, avail the accused with the nature of evidence by the prosecution side including oral, documentary and physical evidence. Three, it informs the parties in particular the accused of his rights before the committing Court as stated by Section 246 of the Criminal Procedure Act, Cap. 20 RE 2022. Noncompliance of section 246 of the Criminal Procedure Act is fatal and leads to nullification of proceedings and judgment. Taking that in mind, committing Court 4 must strictly abide to it for timely justice delivery. Failure to do so affects the accused following nullification of proceedings and judgment by superior Court which may lead to recommittal or trial de novo and the like. That said and done, this Court hereby accede to the pray by both counsels. In the event this Court hereby orders that:
 1. The proceedings by Missenyi District Court in Preliminary inquiry (PI) No. 000017140 of 2024 is hereby nullified as it was conducted in the absence of the accused as he knew nothing for lack of knowledge of Kiswahili and English save for Haya local language.
 2. As accused is not conversant with Kiswahili or English save for Haya local language, this Court directs Missenyi District Court to conduct recommittal with aid of interpreter for the accused from Kiswahili to Haya local language and vice versa.

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3. Recommittal be conducted within thirty (30) days from the date of this

Ruling.

4. Preliminary hearing to proceed on 18/04/2025 at 9.00 am ORDER ACCORDINGLY DATED at BUKOBA this 7th March, 2025. G. P. MALATA JUDGE 5 07/03/2025 RULING delivered at BUKOBA this 7th March, 2025 in the presence of all parties. G.P.MALATA JUDGE 07/03/2025.
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Prepared on 24 October 2026 · Esheria