

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MBEYA**

**(CORAM: KIMARO, J.A., MUGASHA, J.A., And MZIRAY, J.A.)**

**CRIMINAL APPEAL NO. 248 OF 2015**

**FIDELIS MLELWA }  
ISAYA MWAMBAGE } ..... APPELLANTS**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**(Appeal from the judgment of the High Court of Tanzania at Sumbawanga)**

**(Dyansobera (PRM Extended Jurisdiction)**

**dated 3<sup>rd</sup> March, 2009**

**in**

**Criminal Appeals Nos. 23 and 25 of 2008**

.....

**RULING OF THE COURT**

11<sup>th</sup> & 13<sup>th</sup> April, 2016

**KIMARO, J.A.:-**

In the District Court of Sumbawanga sitting at Sumbawanga the appellants and others were charged with five counts. The first count is conspiracy to commit an offence contrary to section 384 of the Penal Code [CAP 16 R.E.2002]. The other four counts were unlawful possession of ammunition contrary to section 4(1) and 34 (1) (2) of the Arms and Ammunition Act, No 2 of 1991. The two appellants and another one who

has not preferred an appeal, were found guilty of all the five counts. The trial court sentenced each of the appellants to imprisonment of seven years for the offence of conspiracy. For the rest of the offences of unlawful possession of ammunition, the appellants were sentenced to imprisonment for fifteen years. The sentences were ordered to run concurrently.

The appellants were aggrieved by the conviction and the sentence. Their appeal to the High Court was heard by Mr. Dyansobera, Principal Resident Magistrate with Extended Jurisdiction at the Court of Resident Magistrate at Sumbawanga.

Still aggrieved, the appellants have filed this appeal. Each of the appellant has filed several grounds of appeal to challenge the legality of upholding the finding of the trial court. Since the matter will not be determined on merit because of an apparent irregularity in the proceedings, we found no reason for disclosing the grounds of appeal.

When the appeal came for hearing, the appellants appeared in person. They were not represented by advocates. Mr. Stambuli Ahmed learned Senior State Attorney appeared for the respondent /Republic. He was assisted by Mr. Hebel Kihaka, learned State Attorney.

The Court "*suo motu*" raised the issue of the legality of the appeal being heard by the Court of the Resident Magistrate with extended Jurisdiction.

Addressing the Court on this issue, Mr. Kihaka, learned State Attorney submitted that Mr. Dyansobera, Principal Resident Magistrate with Extended Jurisdiction had no jurisdiction to hear the appeal. He said the jurisdiction of a resident magistrate with extended jurisdiction is derived from section 45(2) of the Magistrates' Courts Act, [CAP 11 R.E. 2002]. The learned State Attorney referred the Court to the case of **Heriel Adam Kimaro and four others V Republic** Criminal Appeal No. 237 of 2007 CAT Arusha (unreported). He said since there was no compliance of section 45(2) of the Magistrates' Courts Act, the proceedings conducted by Mr. Dyansobera Principle Resident Magistrate with extended jurisdiction were a nullity. He prayed that the proceedings of the Magistrates' Court extended jurisdiction be declared a nullity and the file be remitted back to the High Court for the hearing of the appeal.

Both appellants admitted having no knowledge of the legal issue that was raised. They left the matter to be determined by the Court.

Section 45(2) of Cap 11 reads:

*“The High Court may direct that an appeal instituted in the High Court be transferred to and be heard by a resident magistrate with extended jurisdiction upon whom extended jurisdiction has been conferred by section 45(1)”*

Section 45(1) (a) and (b) empowers the Minister for Justice after consultation with the Chief Justice and the Attorney - General by an order to be published in Government Gazette invest on any resident magistrate with appellate jurisdiction to try any category of cases or any particular case specified in the order, that would ordinarily be exercisable by the High Court.

This means that after the High Court is satisfied that the magistrate it assigns to hear the case or cases which would have ordinarily be heard by it has been vested with appellate jurisdiction to hear such case or cases, it has to issue an order under section 45(2) of Cap 11 transferring such case or cases to the specified magistrate with appellate jurisdiction. In the

case of **Hebel Adamu Kimaro and others** (supra) referred to us by the learned State Attorney; the Court encountered the same issue of a resident magistrate with extended jurisdiction hearing a case filed in the High Court without a formal order that transferred the case to her. The Court held that:

*“On our part, we agree with both Mr. Kaishozi and the appellants. In the absence of an order by the High Court formally transferring the said appeal to a Resident Magistrate with extended Jurisdiction, Lyamuya PRM-Extended Jurisdiction and the judgment emanating there from were a nullity.”*

In this appeal we have gone through the record of appeal thoroughly. There is no formal order which transferred Criminal High Court District Appeal No 22 of 2007 to be heard by Mr. Dyansobera PRM-extended Jurisdiction. This means that the proceedings in RM Criminal Appeals No. 22 and 25 of 2007 were unlawfully before him for lacking an

order issued by the High Court under section 45(2) of the Magistrates' Courts Act requiring him to try the cases.

Exercising powers of revision under section 4(2) of the Appellate Jurisdiction Act, [CAP 141 R.E.2002] we declare the proceedings in RM Criminal Appeals No. 22 and 25 of 2008 before Mr. W.P. Dyansobera, PRM-Extended Jurisdiction a nullity. The file is remitted back to the High Court of Tanzania Sumbawanga for a proper hearing of the appeals which were filed by the appellants. In choosing the appropriate way of disposing of the appeal, we urge the High Court to consider the best court which will dispose of the appeal expeditiously.

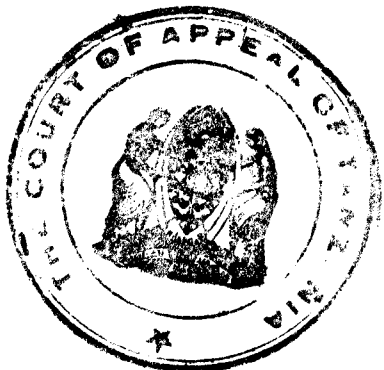
DATED at MBEYA this 12<sup>th</sup> day of April, 2016.

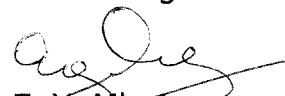
N. P. KIMARO  
**JUSTICE OF APPEAL**

S. E. A.MUGASHA  
**JUSTICE OF APPEAL**

R.E.S.MZIRAY  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the Original.



  
E. Y. Mkwizu  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**