IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: SAMATTA, C.J., MSOFFE, J.A. AND KAJI, J.A.

CRIMINAL APPEAL NO. 60 OF 2000

IKINDILA WIGAE ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT
(Appeal from an order of the High Court of
Tanzania at Tabora)

(Masanche, J.)

dated the 1st day of February, 2000

in

Criminal Appeal No. 60 of 2000

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REASONS FOR DECISION

SAMATTA, C.J. :

This was a short appeal, against an order made by the High Court (Masanche, J.) cancelling the order which had been made by the said Court several years before whereby the appellant, Ikindila Wigae, was granted bail. On February 16, 2005, at the conclusion

of the hearing of the same, we allowed the appeal, quashed the impugned order and restored the order granting bail to the appellant, but we reserved our reasons for so deciding. The following are those reasons.

The background to the appeal may, in the interests of brevity, be stated as follows. On October 1, 1997, the appellant, who was then facing a charge of written threats to murder, contrary to s. 214 of the Penal Code, before the District Court of Igunga, successfully applied for bail before Masanche, J. The learned Judge couched his order in the following words:

> **"Applicant is released on bail in the sum of Shs.500,000/= with two sureties in the like sum. The sureties are to be approved by the Igunga District Court. The applicant is to appear in that Court thereafter on dates given by that Court."**

Following this order, the appellant's sureties were approved by the District Court and he was released from prison. On February 2, 2002, he was charged before the High Court with the aforementioned offence, namely, written threats to murder. He pleaded not guilty to the charge. Having entered a plea of not guilty, the learned Judge proceeded to conduct a preliminary hearing under s. 192 of the Criminal Procedure Act, 1985,

hereinafter referred to as "the Act". No fact was recorded as being undisputed. Counsel for both sides then gave the Court the names and addresses of the witnesses they intended to call at the trial. If the record of the case is a faithful reproduction of what occurred in the courtroom on that day – and we have no reason to doubt its accuracy – immediately after the learned Judge had recorded the name and address of the last witness, he proceeded to make an order in the following terms:

> **"Only the above witnesses are to be called. Case to come for trial in the next session. Accused's bail cancelled. He is remanded in custody till day of trial."**

As already indicated, the appellant was aggrieved by the latter part of this order.

Mr. Kabonde, counsel for the appellant, attacked that order on one ground only, namely, that the learned Judge erred in law and fact in cancelling the bail. He submitted, and Mr. Mbago, Principal State Attorney, conceded, that since there was nothing to suggest that the appellant had broken any of the bail conditions or that there were new circumstances justifying the cancellation of the bail granted, the learned Judge strayed into a serious error in making the impugned order. The learned advocate also contended that, in any case, the failure by the learned Judge to give the

appellant opportunity to be heard on the question of bail was fatal to the order the learned Judge subsequently made because the procedure he adopted was contrary to the requirements of s. 150 of the Act. We entertained no doubt that Mr. Kabonde's contentions were unanswerable. Section 150 of the Act provides:

> **"150. Where an accused person has been admitted to bail and circumstances arise which, if the accused person had not been admitted to bail would, in the opinion of a prosecutor or police officer justify the court in refusing bail or in requiring bail of greater amount, the judge or magistrate, as the case may be, on circumstances being brought to his notice by a prosecutor or police officer, issue his warrant for the arrest of the accused person and, after giving the accused person an opportunity of being heard, may either commit him to prison to await trial or admit him to bail for the same or on increased amount as the judge or magistrate may think just."**

It leaps to the eye that the power to cancel bail or vary the conditions thereof has to be exercised in accordance with this section. One of the principles underlying this statutory provision is that no one should be condemned without being afforded an opportunity to be heard in his defence. In the instant case the

record is patently clear that no new circumstances arose to justify the learned Judge revisiting the question of bail, leave alone committing the appellant to prison. In any case, if such circumstances did arise, the appellant was entitled in law to be given the opportunity to show cause why his bail should not be cancelled.

Section 150 of the Act, in so far as the question of cancellation of bail or variation of the terms thereof is concerned, makes recognition of the right to reasons. Contrary to that section, the learned Judge gave no reasons for committing the appellant to prison to await trial. This was another serious error on the part of the learned Judge in this case. It is a general principle of law of this country that, where the determination of the rights or obligations of a person is involved, a decision maker must give reasons for his decision: see **Tanzania Air Services Limited** v **Minister for Labour, Attorney General and the Commissioner for Labour [1996]** T.L.R. 217. Why should the law demand this? Some eminent authors have given very persuasive answers to this important question. In his book, On Justice, J.R. Lucas writes as follows, at pp. 79 – 80:

> **"If people are to be convinced that decisions are just, they must be able to know the reasons on which they are based. Although many of us often are**

willing to accept the judgment of a man we respect, that acceptance depends on our sometimes knowing and approving his reasons. It is inherent in the concept of judgment that it is based on reasons, and only if the reasons are sometimes available for independent criticism and assessment, can we ever come to trust a man's judgment at all. Reasons must sometimes be available, or decisions will seem arbitrary, and will not enjoy public confidence. The requirement that reasons should always be available goes further. It recognizes a party's right to be disappointed by an adverse decision, and the need to assuage it. Instead of demanding simply that he trust the judge, it allows that the judge could conceivably be wrong, and that the disappointed party could, without irrationality, attribute the adverse decision to an error of judgment on the judge's part, and therefore goes some way to allay this suspicion by exposing the reasons to scrutiny, and enabling everybody concerned to assess them and feel their force for themselves."

In his book, Emerging Trends In Public Law, Dr. Mario Gomez gives his answer in the following terms, at pp. 184 – 185:

> **"Reasons indicate that the decision maker has brought his or her mind to bear on the subject matter in question. It shows that the decision is not arbitrary or capricious. It boosts the integrity of the decision making process if people are told why they were unsuccessful or why a decision had been made in a certain way. Reasons are strong proof that a decision was made fairly taking into consideration all relevant factors and was not motivated by personal factors. Reasons also facilitate a subsequent legal challenge to that decision."**

The learned author goes on to add, at p. 232, that:

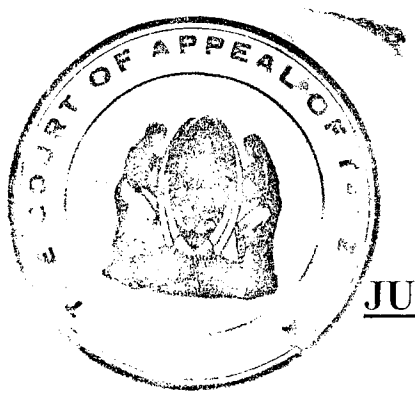
> **"A lack of reasons may not only leave a person 'disappointed' but also 'disturbed.'"**

It cannot be doubted that reasons enhance public confidence in the decision making process. If a judge or magistrate were to decide a matter before him by tossing a coin, it is quite possible that his decision would be correct, but neither a lawyer nor a layman would regard it as being acceptable. The decision would be unacceptable on the ground of irrationality. Although compliance with the requirement of giving reasons cannot protect parties against all wrong decisions, for the reasons very ably given by the distinguished authors in the passages we have quoted above, the

importance of the right to reasons cannot be over-emphasized. A party to a court proceeding is perfectly entitled to tell the judge: "My Lord, make your decision, but let me know the reason or reasons for it." In the instant case no reasons for the learned Judge's decision were discernible on record. This irregularity was, in our opinion, another ground for faulting the learned Judge's decision.

It was for the reasons we have stated above that we allowed the appeal and made the resultant order.

DATED at DAR ES SALAAM this 10th day of March, 2005.



B. A. SAMATTA
CHIEF JUSTICE

J. H. MSOFFE
JUSTICE OF APPEAL

S.N. KAJI
JUSTICE OF APPEAL

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

S. M. RUMANYIKA
DEPUTY REGISTRAR