

**IN THE COURT OF APPEAL OF TANZANIA**  
**AT DAR ES SALAAM**  
**(CORAM: MKUYE, J.A., WAMBALI, J.A. And KITUSI, J.A.)**

**CRIMINAL APPEAL NO. 545 OF 2017**

**NASRA HAMISI HASSAN ..... APPELLANT**

**VERSUS**

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

**(Appeal from the conviction and sentence of the Resident Magistrate Court  
of Dar es Salaam at Kisutu Extended Jurisdiction)**

**(KALLI PRM EXT. JURISDICTION)**

**Dated the 14<sup>th</sup> day of November, 2017**

**in**

**Criminal Sessions Case No.59 of 2015**

.....

**JUDGMENT OF THE COURT**

19<sup>th</sup> August & 3<sup>rd</sup> November, 2020.

**WAMBALI, J.A.:**

The Resident Magistrate Court of Dar es Salaam (Kalli PRM Extended Jurisdiction) which sat at Kisutu in Criminal Sessions Case No.59 of 2015 under extended jurisdiction convicted the appellant Nasra Hamisi Hassan of the offence of murder. Consequently, after the trial court considered the mitigation of the appellant that at the time she committed the offence of murder she was 17 years old, in terms of section 26 (2) of the Penal Code, Cap.16 R.E. 2002 (the Penal Code), it ordered that she should be detained during the President's pleasure. It was further ordered

that she should be detained in such place under conditions to be directed by the Minister responsible for legal affairs.

As it were, the appellant was aggrieved by the conviction and the order of detention, hence the present appeal. Through the services of Mr. Nehemiah Geoffrey Nkoko, learned advocate she lodged a memorandum of appeal comprising six grounds of appeal. However, for the reasons which will be apparent shortly, we do not intend to reproduce or summarize the respective grounds of appeal.

When the appeal was called on for hearing before us, Mr. Nehemiah Nkoko, learned advocate appeared for the appellant, whereas Ms. Aziza Mhina assisted by Ms. Dhamiri Masinde, both learned State Attorneys entered appearance for the respondent Republic.

Based on our perusal of the record of appeal, it is not doubted that the District Court of Bagamoyo conducted committal proceedings and subsequently committed the appellant to the High Court for trial on the offence of murder of Shamsi Shaban at Buyuni Village within Bagamoyo District in Coast Region on 12<sup>th</sup> March, 2013. Following the said committal, Criminal Sessions Case No.30 of 2014 was registered at the High Court of Tanzania at Dar es Salaam District Registry. Noteworthy, the record of appeal does not contain a record showing the transfer of

the said Criminal Sessions Case to the Court Resident Magistrate of Dar es Salaam at Kisumu where it was registered as extended jurisdiction Criminal Sessions Case No.59 of 2015. However, upon our perusal of the original record of proceedings before the trial court, we found that in terms of section 256A (1) of the Criminal Procedure Act, Cap.20 R.E. 2002 (the CPA) the case was transferred to be heard by a resident magistrate with extended jurisdiction duly appointed under section 173 (1) of the same Act. Specifically, on 15<sup>th</sup> April, 2015, the Judge in charge of the High Court at Dar es Salaam District Registry transferred Criminal Sessions Case No.30 of 2014 on direction that the trial be conducted by Shaidi, Principal Resident Magistrate with Extended Jurisdiction (Shaidi PRM EJ). In that regard, the case file was placed before Shaidi PRM EJ who on 13<sup>th</sup> May, 2015 conducted preliminary hearing and adjourned the hearing to a date to be fixed for the trial of the appellant.

It is further noted from the record of appeal that, the trial of the appellant commenced on 17<sup>th</sup> May, 2017 before A. H. Kalli, Principal Resident Magistrate with Extended Jurisdiction (Kalli PRM EJ) after almost more than two years since the preliminary hearing was conducted. However, the record of appeal does not show how the case was transferred from Shaidi PRM EJ to Kalli PRM EJ. Be that as it may, it is

Kalli PRM EJ who conducted the trial up to the conclusion of the case, convicted and ordered the detention of the appellant as alluded to above.

It was in the light of the above stated background that at the outset, before we commenced the hearing of the appeal, we required counsel for the parties to address us on the following two issues; One, whether Kalli PRM EJ had jurisdiction to try the case; and two, whether the Resident Magistrate Court of Dar es Salaam at Kisutu had jurisdiction to try the case that originated from Bagamoyo District Court within Coast Region.

Both learned counsel, Mr. Nkoko and Ms. Mhina conceded that in the absence of the explanation on how the trial magistrate Kalli PRM EJ took over from Shaidi PRM EJ who conducted the preliminary hearing, the proceedings that led to the conviction and detention of the appellant at the President's pleasure are a nullity as she had no jurisdiction to try the case. Similarly, they conceded that the Resident Magistrate Court of Dar es Salaam at Kisutu had no jurisdiction to try the case which originated from Bagamoyo District Court within Coast Region.

However, while both counsel agreed that the Court should invoke the provisions of section 4 (2) of the Appellate Jurisdiction Act, Cap.141 R.E. 2019 (the AJA) to nullify the entire proceedings conducted by both

Principal Resident Magistrates with Extended Jurisdiction, quash conviction and set aside the order of the appellant's detention at the President's pleasure, they sharply disagreed on the final order of the Court on the fate of the charge against the appellant. Mr. Nkoko was of the firm opinion that in the circumstances of this case the appellant should be acquitted on the contention that the irregularities are incurable and renders the trial a nullity. Thus in his submission, a retrial will not be in the interest of justice and will prejudice the appellant. On the contrary, Ms. Mhina urged the Court to order a retrial on the contention that it is in the interest of justice.

We are thus called upon to deliberate on the propriety of the proceedings before the trial court and the way forward.

In the present appeal, the record of appeal is not clear on how the trial of Criminal Sessions Case No.59 of 2015 which initially was Criminal Sessions Case No. 30 of 2014 but, in terms of section 256A (1) of the CPA, it was transferred by the High Court to be heard by Shaidi PRM EJ was later placed before Kalli PRM EJ for trial. Besides, the record of appeal does not show if there were reasons for the transfer to the respective magistrate as required by law. For purpose of clarity, we deem

it appropriate to reproduce the provisions of section 256A (1) of the CPA as hereunder: -

*"(1) The High Court may direct that the taking of a plea and the trial of an accused person committed for trial by the High Court, be transferred to, and be conducted by a resident magistrate upon whom extended jurisdiction has been granted under subsection (1) of section 173".*

It must be emphasized that in terms of section 256A (1) of the CPA, a magistrate exercising extended powers to whom a case is transferred must take the plea and conduct the trial [see **Thomas Gasper Mchamisi v. The Republic**, Criminal Appeal No.291 of 2013 (unreported)]. This is contrary to what transpired in the present case in which Shaidi PRM EJ to whom the case was transferred conducted only the preliminary hearing while the trial was conducted by Kalli PRM EJ. Moreover, there is no indication in the record of appeal on how the case was further transferred to Kalli PRM EJ and the reason for the inability of Shaidi PRM EJ to conduct the trial. It is in this regard that in similar circumstances, in the case of **Msana Mwita @ Marwa v. The Republic**, Criminal Appeal No.194 of 2012 (unreported) the Court stated that: -

*"We will hasten to add that the PRM EJ to whom the case has been transferred as above must take the plea and conduct the trial to completion unless for some reason, which must appear on the record, the PRM, EJ who had started to deal with the matter is unable to proceed with it to the end. Therefore, like the proceedings before Mtetela PRM, EJ the proceedings before Kalombola were a nullity."*

Similarly, in **Juma Lyamwiwe v. The Republic**, Criminal Appeal No.42 of 2001 (unreported), the Court stated that: -

*"Section 256A (1) of the CPA envisages that the Resident Magistrate with extended jurisdiction to whom the case, is transferred will take a plea and then conduct a trial. And a trial, no doubt, includes a preliminary hearing".*

It follows that even in the present case the proceedings conducted by Kalli PRM EJ were a nullity as there is no record to show that the High Court validly, in terms of section 256A (1) of the CPA made further transfer of the said case to her to conduct the trial.

Having declared that the proceedings in Criminal Session Case No.59 of 2015 before Kalli PRM EJ were a nullity, we would have ended here and ordered a retrial before another magistrate with Extended

Jurisdiction since the trial of the case was initially properly transferred by the High Court to Shaidi PRM EJ.

However, in the light of the second issue concerning the jurisdiction of the trial court, we feel constrained to deliberate and determine the propriety of the Court of Resident Magistrates of Dar es Salaam at Kisutu to entertain a trial of the case which originated from Bagamoyo District Court within Coast Region.

Jurisdiction of the court is a matter which must be taken seriously as it is fundamental in the administration of justice. In this regard, in **Fanuel Mantiri Ng'unda v. Herman Mantiri Ng'unda and Two Others**, [1995] TLR 155 the Court stated that: -

*"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the Court to adjudicate upon cases of different nature. **In our considered view, the question of jurisdiction is so fundamental that the Court must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial.** This should be done from the pleadings. The reason for this is that it is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court*



*has jurisdiction to adjudicate upon the case. For the court to proceed to try a case on the basis of assuming jurisdiction has the obvious disadvantage that the trial may well end up in futility as null and void on grounds of lack of jurisdiction when it is proved later as a matter of evidence that the court was not properly vested with jurisdiction.”*

[Emphasis added].

It is settled law that the High Court of Tanzania enjoys territorial jurisdiction within Tanzania mainland. On the contrary, a Court of Resident Magistrate enjoys the jurisdiction within the area it is established by the order of the Chief Justice as stipulated under the provisions of section 5 of the Magistrates’ Courts Act, Cap.11 R.E. 2019 (the MCA).

Thus, when the High Court transfers the case to a specific magistrate with extended jurisdiction in terms of section 256A (1) of the CPA, the trial must be conducted within the jurisdiction of the Court of Resident Magistrate in which the offence was alleged to have been committed. In the circumstances, the Resident Magistrate with extended jurisdiction to whom the case has been validly transferred for trial or appeal, must exercise that jurisdiction within the jurisdiction of a particular Court of Residents Magistrate where the offence was

committed. It must be emphasized that a Court of Resident Magistrate does not enjoy the same territorial jurisdiction enjoyed by the High Court.

It is thus instructive to reiterate what the Court stated in **James Sendama v. The Republic**, Criminal Appeal No. 279 "B" of 2013 (unreported) that:-

- 1) The territorial jurisdiction of Magistrates' courts is governed by sections 3, 4, and 5 of the Magistrates' Courts Act. For purpose of the present appeal, the relevant provisions are sections 4 and 5.*
- 2) The territorial jurisdiction of Courts of Resident Magistrates would be such area as the Chief Justice may designate from time to time in the Gazette, under section 5 (1) of the Magistrates' Courts Act. Under GNs No.68 of 1981 and 570 of 1986, the Chief Justice proclaimed several Courts of Resident Magistrates and their respective area of jurisdiction. Under that notice, the jurisdiction of the Court of the Resident Magistrate of Shinyanga is Shinyanga Region.*

Similarly, our perusal of GNs No. 68 of 1981 and 570 of 1986 indicates that the jurisdiction of the Court of Resident Magistrate of Dar es Salaam which sits at Kisutu is Dar es Salaam Region.

It follows that although Criminal Sessions Case No 59 of 2015 was, in terms of Section 256A of the CPA, properly and specifically transferred to be heard by Shaidi PRM EJ, the entire proceedings before him and Kalli PRM EJ are a nullity as the Court of Resident Magistrate of Dar es Salaam had no jurisdiction to try the case which originated within the jurisdiction of the Court of Resident Magistrate of Coast Region. Indeed, lack of jurisdiction of the Court of Resident Magistrate of Dar es Salaam was further compounded by the fact that Kalli PRM EJ who conducted the trial to conclusion also lacked jurisdiction. As we have alluded to above there is no order in which the High Court specifically transferred the case to her in terms of section 256A (1) of the CPA.

In the present case, there is no doubt that the offence was alleged to have been committed at Buyuni Village within Bagamoyo District in Coast Region. Besides, it is the District Court of Bagamoyo which committed the appellant for trial by the High Court. To this end, we must emphasize that regardless of the specific magistrate duly appointed in terms of section 173 (1) of the CPA to whom the case is properly transferred under section 256A (1) of the CPA, the respective trial must be conducted within the jurisdiction of the Court of Resident Magistrate in which the offence is alleged to have been committed.

At this juncture, we deem it appropriate to reproduce the provisions of section 173 (1) (a) and (2) of the CPA which provides as follows: -

*"173 (1) (a) The Minister may after consultation*

*with the Chief Justice and the Attorney General, by order published in the Gazette,*

*(a) Invest any resident magistrate with power to try any category of offences which, but for the provisions of this section, would ordinarily be tried by the High Court and may specify the area within which he may exercise such extended powers;*

*(2) Nothing in this section shall affect the power of the High Court to order the transfer of cases."*

Our understanding of the reproduced provision leads us to the settled opinion that it does not authorize or empower the High Court to transfer a case to be tried in a Court of Resident Magistrate outside the jurisdiction from where it originated as it happened in this case.

It is noteworthy that in the present case, more importantly, it is unfortunate that the High Court's transfer order did not indicate the name of the court in which the trial had to be conducted. For purpose of clarity,

we deem it appropriate to reproduce the initial order of transfer of the case to Shaidi PRM EJ as hereunder: -

*"In terms of the provisions of section 256A (1) of the Criminal Procedure Act, I hereby direct the transfer of this case to and be heard by the Hon. SHAIDI, PRM Extended jurisdiction."*

It is important to note that in **Thomas Gasper Mchamisi** (*Supra*) despite the fact that the trial magistrate was not the one who was mentioned in the order of transfer, he also sat in the District Court of Rombo but the record indicated as a Resident Magistrate Court of Kilimanjaro at Rombo. In its decision the Court observed that although the trial magistrate with extended jurisdiction was not the one mentioned in the order of transfer, yet he purportedly sat and conducted the trial at "The RESIDENT MAGISTRATE COURT OF KILIMANJARO AT ROMBO (EXTENDED JURISDICTION)" while the order of transfer directed the trial to be conducted at Moshi Resident Magistrate's Court before another magistrate.

In this regard, we wish to urge the relevant authorities exercising the power to transfer cases under section 256A (1) of the CPA to specific resident magistrate with extended jurisdiction duly appointed in terms of

section 173 of the CPA, to also indicate the name of the respective Court of Resident Magistrate in which the preliminary hearing and trial is to be conducted.

In the circumstances, based on our deliberation above, we are settled that even the proceedings which were conducted by Shaidi PRM EJ were equally a nullity for lack of jurisdiction.

Consequently, in terms of section 4 (2) of the AJA, we quash the entire trial court's proceedings from the preliminary hearing conducted by Shaidi PRM EJ, the subsequent trial proceedings by Kalli PRM EJ in respect of Criminal Session Case No.59 of 2015, and all orders subsequent to the filing of the information in the High Court. We also quash the conviction and set aside the order of detention of the appellant during the President's pleasure.

In the event, as the Court of Resident Magistrate of Dar es Salaam at Kisutu had no jurisdiction to try the case against the appellant, we cannot order a retrial before the same court.

Ultimately, as the information in respect of Criminal Session Case No.30 of 2014 was properly lodged before the High Court we remit the matter to it on the direction that the case should be dealt with in

accordance with the law as soon as practicable. We further direct that pending the action to be taken by the High Court the appellant be in custody.

**DATED at DAR ES SALAAM this 27<sup>th</sup> day of October, 2020.**

R. K. MKUYE  
**JUSTICE OF APPEAL**

F. L. K. WAMBALI  
**JUSTICE OF APPEAL**

I. P. KITUSI  
**JUSTICE OF APPEAL**

This Judgment delivered on 3<sup>rd</sup> day of November, 2020 in the presence of the Appellant in person and Ms. Dhamiri Masinde, learned State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.



G. H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**