

IN THE COURT OF APPEAL OF TANZANIA

AT Mwanza

CORAM: MUSTAFA, J.A.; MAKINE, J.A. And KISANIA, J.A.

CRIMINAL APPEAL NO. 51/83

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS.....APPELLANT

VERSUS

JOHN MTUNGI. RESPONDENT

(Appeal from the Order of the High Court
of Tanzania at Tabora) (Patel, J.) dated the
20th day of December, 1977

in

Criminal Sessions Case No. 103/72

JUDGEMENT OF THE COURT

MUSTAFA, J.A.:

This is an appeal by the Republic from an order made by
Patel, J. on 20.12.77 in Criminal Sessions Case No. 103 of 1972
Republic v. John Mtungi.

John Mtungi was charged with the murder of Kinono s/o Pera
on 1.6.71. John pleaded not guilty to the information. Then
Counsel for the Republic informed the Court that John had committed
the offence while he was suffering from mental illness and asked
for a Specialist report to be produced. Then a Court Clerk
appeared as a witness and produced a report from a Specialist
Psychiatrist from Isanga Institution. It was admitted as Exhibit P.1.
Then another report of a subsequent date was also admitted.

Then Counsel for the Republic is reported to have stated

"On the strength of this report I request the
Court to make an order under section 168 of
the Criminal Procedure Code".

Then the Court made an order:

"The court make a special finding that the accused
did the act charged but by reason of his insanity
he is not guilty of the offence. It is ordered
that the accused be kept in custody as a criminal
lunatic and record of proceedings be sent to the
Minister concerned under section 168 of the Criminal
Procedure Code".

...../2. ✓

The accused's Counsel, one R. H. Patel seemed to have acquiesced in the order made, as he made no protest. The Republic has appealed from that order on the ground that no special finding of guilt under section 168 of the Criminal Procedure Code can be made without evidence being adduced in support of the charge, and that the trial judge erred in finding the accused guilty but insane without conducting a trial when the accused had pleaded not guilty.

There is merit in the Republic's appeal. The order of the judge is clearly misconceived and invalid. The judge in effect had found John guilty of murder and convicted him as a criminal lunatic when no evidence that he had committed the crime had been adduced before him.

In terms of section 168 of the Criminal Procedure Code under which the judge had purported to act it is **pertinent** to note ~~that~~ the following words appear

".....then if it appears to the court before which such person is tried that he did the act or made the omission charged, but was insane as aforesaid when he did or made the same....."

Obviously before an accused person could be found to have done an act or made the omission, there must be evidence adduced to show that he had so acted or omitted to act.

A special finding that an accused did ~~the~~ ^{act} charged but by reason of insanity is not guilty of the offence is in substance a conviction. So the judge in this case had convicted a man without any trial or hearing any evidence in support of the charge and his order is clearly in error and is hereby quashed and set aside.


DATED at Mwanza this 20th day of November, 1985.

A. MUSTAFA
JUSTICE OF APPEAL

L. H. MUKAME
JUSTICE OF APPEAL

R. H. KISIMU
JUSTICE OF APPEAL

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


(A. A. M. SHAYO)
Ali. DEPUTY REGISTRAR
COURT OF APPEAL OF TANZANIA.