

TANZANIA / JUDGMENT

RULING Juma Hassan Chinga

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9 July 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (DAR ES SALAAM SUB-REGISTRY) AT DAR ES SALAAM MISC. CRIMINAL APPLICATION NO30042 /2024 Ref 202410212000030042 (Arising from Economic Case No 50 of 2022 in the Resident Magistrates' Court of Dar es Salaam at Kisutu) THE DIRECTOR OF PUBLIC PROSECUTION..... APPLICANT VERSUS RAJABU JUMA HAASSAN @ CHINGA.....1ST RESPONDENT HAMIS HARUNI STAMBULI @ KIJAKA.....2ND RESSPONDENT JUMA HARUNI STAMBULI.....3RD RESPONDENT

RULING:

12th & 24 Feb 2025. KIREKIANO J: There is a pending criminal proceeding before the court of the Resident Magistrate of Dar es Salaam at Kisutu, Economic Case No. 50 of 2022. The Respondents are charged with eight counts: unlawful dealing in trophies, Unlawful possession of Government Trophies, and six Counts of Money Laundering. The particulars of the charge are not relevant here. When the trial was in progress, the first prosecution witness PW1 Gerald Evarist Mlay, attempted to tender exhibits that is 22 pieces of elephant tusks and 20 elephant tusks. The attempt to tender the exhibits was 1 objected by the defence and the trial court sustained the objection and declined to admit the same on reasons it gave that the witness was not competent to tender the exhibit. The applicant here in has preferred this application under Section 43 (1) of the Magistrates' Court Act [CAP. 11 R.E 2019] and Section 372 (1) of the Criminal Procedure Act [CAP. 20 R.E 2022] and any other enabling provision seeking the following orders:

1. That the honourable Court be pleased to call for the records and examine proceedings and the ruling dated on the 9th day of July 2024 in the Economic Case No 50 of 20222 in the Resident Magistrates' Court of Dar es Salaam at Kisutu, delivered by Hon. MUSHI, PRM, to ascertain the legality, propriety, rationally, and correctness of the order recorded/passed and the regularity of the proceedings.
2. That, if the first ground is affirmative, let the honourable Court be pleased to revise and set aside the order emanating from the ruling in Economic Case No 50 of 2022, delivered by Hon. MUSHI, PRM, and nullify its proceeding.

3. That further, the honourable Court be pleased to invoke its inherent jurisdiction to order for admission of exhibit (22 pieces of elephant tusk and 20 Elephant tusks) which 2 was tendered by PW 1 during the hearing in Economic Case No. 50 of 2022 before Hon. MUSHI PRM.
4. Any other order this Honorable Court deem fit or just to grant under the circumstance. When served with the application, the counsel for the respondent Mr Dominicus Mkwera posed an objection against the application on one point thus, This application is incurable defective this is because it is contrary to section 372 (2) of the Criminal Procedure Act [Cap 20 R.E. 2022] During hearing, the applicant was represented by Miss Salome Matunga, a learned state attorney, while the respondent had the service of Mr Dominicus Mkwera, learned advocate. Submitting in support of the objection, Mr Mkwera argued that section 43 (1) of the Magistrate Act Cap 11 [RE 2019] and section 372 (1) of the Criminal Procedure Act (CPA) give powers to this court to revise the proceedings. Still, the same is limited where a decision is not finally determining the case. According to him, where there is an order or decision that does not finally determine the matter before the trial court, the same should not be challenged by way of revision since it is limited under section 372(2) CPA 20. In support of his position, he cited the CAT decision in 3 Peter Michael Madeleka vs Republic (Criminal Appeal No. 263 of 2022) [2024] TZCA 356 (14 May 2024) Mr Mkwera argued that looking at the prayers in the chamber summons and the applicant's deposition in paragraphs 3- 11 in the affidavit shows the applicant wishes to challenge the interlocutory decision made. As such, he argued that this court can not order the trial court to admit the exhibits. Instead, the applicant ought to be guided by the decision in Peter Madeleka' case to continue with the trial. If they lose the case, they would be at liberty to appeal against that order. He thus asked this court to find the application incompetent and dismiss the same. For the applicant, Miss Matunga maintained that the two sections cited allow this court to revise the trial court's proceedings. Specifically, section 372 (1) CPA deals with the correctness of the proceedings. As such, she was of the opinion that the prayers concern the proceedings and the

ruling.

When responding to the position in the cited case of Peter Michael Madeleka she argued that in the same decision on page 11 the court clarified that this court's powers to revise the proceeding are served under section 372(1) as the Court of Appeal stated thus: 4 The parliament in its wisdom saw it fit to enact section 372

- (1) to empower the High Court to call for and examine the record of proceedings from the subordinate courts with a view to satisfying itself as to their correctness, propriety of any orders findings, sentences passed by such courts and the legality of any such proceedings. (Emphasis supplied). She thus beseeched me to overrule the objection and find that the application is competent. In his rejoinder, Mr Mkwera maintained that the applicant's

submission did not appreciate that there was an order of the trial court, which is the basis of this application. He argued this court to strike out the application. On my part, I have carefully considered the parties contending

submissions.

Reading from section 372 (1) of the Criminal Procedure Act, generally, this court has powers to call for and examine the record of any criminal proceedings before any subordinate court to satisfy itself as to the correctness, legality, or propriety of any finding, sentence, or order recorded or passed and as to the regularity of any proceedings of any subordinate court. 5 As such, it is the law that revision shall not lie against any preliminary or interlocutory decisions or orders of the district court or a court of a resident Magistrate unless such decision or order has the effect of finally determining the criminal charge or the suit. This is the position under section 43 (2) of the Magistrate Court Act Cap 11 and section 372(2) of the Criminal Procedure Act Cap 20. I have read the cited decision in Michael Madeleka vs Republic. In this decision, the court of appeal elucidated that the power to revise was served under section 372 (1). As far as the process is concerned, page 13 held thus: We are inclined to agree with the appellant that the High Court slipped into an error in holding that its hands were tied in determining the application by reason of the bar in section 372(2) of the CPA from doing so. In its wisdom, the parliament did not want to restrict the power of the High Court from calling for and examining the proceedings of subordinate courts to satisfy itself as to the regularity of such proceedings in the same manner it did with preliminary decisions and orders with no effect of finality Much as this court can revise the proceedings, there is also a limitation under sub-section 2 of section 372 against revision from any preliminary or interlocutory decision or order of a subordinate court not having the effect 6 of finality. The applicant is not contesting this position, so they premised the application under sections 372 (1) and 43 (1) MCA and relied on the decision cited above that is Peter Madeleka vs Republic on this court's leeway to revise the proceedings. I have understood the powers under section 372 (1). With or without citation of section 372(1), the question that I find decisive is whether, looking at the prayers in the chamber summons and the depositions in the affidavit, this court can exercise its revisional powers as intended undersection 372(1) CPA and grant the prayers sought. In substance the applicant's grievance is on the trial court ruling refusing the exhibit's admission. In the chamber summons, the applicant states in part; That, if the first ground is affirmative, let the honourable Court be pleased to revise and set aside the order emanating from the ruling in Economic Case No 50 of 2022, delivered by Hon. MUSHI, PRM, and nullify its proceeding. Further, the honourable Court would be pleased to invoke its inherent jurisdiction to order for admission of the exhibit (22 pieces of elephant tusk and 20 Elephant tusks), which was tendered by PW 1 during the hearing in Economic Case No. 50 of 2022 before Hon. MUSHI PRM 7 Having Mkvera that this application is limited under section 373(2) CPA. Again, having considered Miss Matunga's submission,I am not persuaded by her submission that the same involves the proceedings. In Boniface Jacob (ex-mayor Ubungo) vs Republic (Criminal Revision No. 31235 of 2024) [2024] TZHC 9797 (28 November 2024), when faced with a similar scenario, I took the view that a party aggrieved by the interlocutory decision which is

otherwise limited under section 372 (2) may not apply to the court by disguising it under section 372 (1) CPA to confer jurisdiction of the court. The purpose of chamber summons is for the applicant to assert their claim for the Court to adjudicate over the matter; thus, it is the prayers in the chamber summons that guide the court to consider its powers. Having considered the prayers and reliefs sought in chamber summons. The same are centred on a decision passed, thus limited under section 372 (2) CPA section 43 (2) MCA Cap 11. This objection is merited and therefore sustained. The respondent made a prayer for the dismissal of the application. The position of law is that an incompetent application can not be dismissed; instead, the proper order is to strike out the same. All said, the respondent's preliminary objection is sustained. The application is 8 incompetent because precluded by the provisions of section 43 (2) of the MCA and section 372 (2) CPA Cap 20. It is accordingly struck out. Dated at Dar es Salaam this 24 February 2025. A J KIREKIANO JUDGE 24.2.2025 9

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Prepared on 14 October 2026 · Esheria