

TANZANIA / JUDGMENT

REVISION FINAL

COURT
TANZLIIDECIDED
1 January 2025

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB-
REGISTRY AT DAR ES SALAAM CRIMINAL REVISION NO 1688 /2025 CASE Ref no
202501202000001688 [Originating from Criminal Case No. 993 of 2025, which is pending in the
Resident Magistrate's Court of Dar es Salaam at Kisutu, Hon. BR Nyaki- PRM) DR. WILBROAD
PETER SLAA.....APPLICANT VS
REPUBLIC.....RESPONDENT

RULING:

24th & 30th Jan 2025. KIREKIANO, J: Under Section 372 (1) and 392A (2) of the Criminal Procedure Act [Cap. 20 R.E 2022], the applicant herein has brought this application, praying for the following orders;

- (i) That this Honourable Court be pleased to call for and examine the records of Criminal Case No. 993 of 2025 which is pending in the Resident Magistrate's Court of Dar Es Salaam at Kisutu for the purpose of satisfying itself as to the correctness, legality, propriety of any finding or 1 order recorded or passed and regularity of the said proceedings. (ii) Any other order (s) as this Honorable Court will deem fit, just and equitable to grant. The application is supported by the affidavit of Miss Emiliana Wilbroad Muchu Slaa, the applicant's daughter. Her deposition is brief to the effect that, the applicant being charged in Criminal Case No. 993 of 2025 while the investigation of the said case has not been completed has caused irreparable suffering and loss of his personal freedom as he is held at Keko remand prison without lawful cause. The application is contested by the respondent who filed a counter affidavit deponed by Mr Michael Lucas Ngoboko, learned senior state attorney. For coherence purposes, I find it apt to recap, albeit briefly, the factual background of this application. In criminal Case No.993 of 2025, before the Court of Resident Magistrate of Dar es Salaam at Kisutu, the applicant is charged with one count of Publication of False Information, C/section 16 of The Cyber Crimes Act, No 14 of 2015. The applicant pleaded not guilty to the charge. According to the proceedings dated 10.1.2025, the respondent informed the trial court that the case investigation was incomplete. A 2 glance at the said proceedings shows that on 17.1.2025, when the case came for mention again, the respondent maintained the status that the investigation was incomplete. The applicant's counsel, Mr Peter Madeleka, had his mind on the provision of Section 131A (1) and (2) of the Criminal

Procedure Act, Cap. 20 [R.E 2022]. He raised a preliminary objection that the charge is bad in law for non compliance with section 131A (1) and (2) of the Criminal Procedure Act, Cap. 20 [R.E 2022]. It is worth noting at this stage that, the said provisions provide thus; 131A.-(1) Notwithstanding the provisions of this Act and any other written law for the time being in force relating to filing of charges in court, except for serious offences and offences triable by the High Court, no charge shall be filed in court before investigation is completed.

- (2) Where investigation is not completed, a person suspected to have committed an offence other than that which is stipulated under subsection (1), shall be subjected to a police bond or bail in accordance with the provisions of this Act. It is noted here that the parties were heard on that objection and the trial court reserved its ruling to be delivered on 23.1.2025. The applicant 3 through the service of Mr Peter Madeleka on 20.1.2025, filed this application seeking the reliefs mentioned above. During hearing of this application, the applicant was represented by Mr Hekima Mwasipu, Mr Peter Madeleka, Mr Edson Kilatu, Mr Paul Kisago, and Miss Mwanaisha Mndeme, learned advocates. The respondent was represented by five state attorneys; Mr Nasoro Katuga PSA, Mr Tawabu Yahaya Issa SSA Miss Nura Manja SSA, Mr Michael Ngoboko SSA and Mr John Edgar SA. When the applicant was invited to address this court, it was Mr Madeleka who raised to argue in support of the application. He asked this court to exercise its powers under section 372 (1) Criminal Procedure Act Cap 20 [RE 2022], and revise the trial court proceedings, starting from 10.1.2025. According to him the proceedings are tainted with illegality. He argued that the offence in which the applicant is charged with ought to be laid after completion of investigation. Instead, the decision by the Director of Public Prosecution (DPP) to prefer the charges was contrary to law that is section 131A (1) and (2) CPA and was misuse of DPP powers under article 59B of the Constitution of United Republic of Tanzania and at the expense of the applicant. 4 When prompted to give his view on the fact that the trial court has reserved a ruling on the same issue, he said this does not make a difference. According to him, the trial court proceedings, including the pending ruling, are all illegal. He thus asked this court to nullify the proceedings and set the applicant at liberty. On part of the respondent, Mr Katuga responded that, this court is not a proper forum to challenge the legality of the charge or jurisdiction of the trial court by way of revision. According to him these are matters within the powers of the trial court. He invited this court to the record of the trial court on 17.1.2025 which shows that, the issue was raised at the trial court, the parties were heard but the trial court could not deliver its ruling before the applicant preferred this application. He said in absence of that decision of the trial court, this application was not properly filed under section 372(1) CPA. As such the complaints of violation of the constitutional if any ought to be preferred in proper forum, including use of the Basic Rights and Enforcement of Duties Act. In his rejoinder Mr Madeleka maintained that, the applicant can not await the ruling while all what is happening at the trial court is all illegal. As such he said, in his submission he cited provision of the constitution as 5 a foundation of his argument but not with view of enforcing such rights in this proceeding. On my part, I wish to highlight, at this stage, this court's powers to revise the proceedings of the lower court, as queried by Mr Katuga. It is

clear that the proceeding is still pending in the subordinate court and no decision is made yet. However, reading from section 372 (1) CPA Cap 20 revision may still be conducted on the proceedings for the purpose of satisfying as to the correctness, legality or propriety as to the regularity of any proceedings. See Peter Michael Madeleka vs Republic (Criminal Appeal No. 263 of 2022) [2024] TZCA 356 (14 May 2024) In my opinion, exercising these court powers on undecided proceedings is a matter of necessity and limited as opposed to routine and optional forum. My view is fortified by the view taken by the Supreme Court of Zimbabwe, which I consider highly persuasive; this was in Robert M Gumbura and Six Others Vs Francis Mapfumo and The National Prosecuting Authority Sc 10/22 Civil Appeal No.Sc 333/19 - Zimlil Citing Achinulo v Moyo N.O & Another 2016 (2) ZLR pg. 416 thus; "A superior court should always be slow to intervene in uninterminated proceedings of an inferior court and will ordinarily not sit in judgment over a matter that is before the court below except in very rare situations where a grave injustice would occur if the superior court does not intervene". (emphasis supplied) Now, with regard to the proceedings at the trial court, criminal case no. 993 of 2025, there is no argument that the offence in which the applicant is facing is not triable by the subordinate. The parties disagree on whether it was proper for the trial court to entertain the charge to the extent it did while the investigation was not completed. As indicated above, it is also common ground that, this is the issue which was posed, by the applicant counsel as an objection against the charge. I have examined the record this fact appears on the record of 17.1.2025 and ruling was reserved to be delivered on 23.1.2025. Mr. Madeleka persuaded me to make a finding on the same issue, which awaits the decision at the trial court. According to him the whole exercise at the trial court is illegal. Having given that thought, I am unable to take this path. This is because, much as the trial court has jurisdiction to try the offence, other issues arising in the proceedings, including the propriety, validity or otherwise legality of the charge and even question whether the court could under the circumstance, exercise its jurisdiction was within the powers of the trial court to determine in the first place. 7 Going by the record of the trial court, I take it that the parties had the same view, that is why, on 17.1.2025, the applicant raised the same issue, the parties were heard, and the trial court reserved its decision. It is astonishing, to say the least, why the applicant could not be patient in awaiting the trial court decision on the objection, having made his case through his advocate. On my examination of the record, having been posed with the issue, it was proper for the trial court to address the objection before proceeding with the trial of the charge. Having gone through the proceedings from 10.1.2025, I am satisfied that there was nothing irregular or illegal in the trial court proceedings. Asking this court to decide a matter whose hearing was done at the trial court is an attempt to drag this court into adjudication confusion, and the argument did not come close to convincing me. The applicant also asked this court to make any other appropriate order (s). Given what I have deliberated above, this court directs that the records in Criminal Case No. 993 of 2025 be reverted to the trial court, which shall expeditiously proceed to deal with the same, including delivering its ruling on the validity of the charge. It is so ordered. 8 A J KIREKIANO JUDGE. 30.1.2025. COURT Ruling delivered in the presence of the applicant and the presence of Mr Tundu Lisu, Mr Hekima Mwasipu, Mr Peter Madeleka, Miss

Mwanaisha Mndeme, Mr Edson Kilatu and Mr Melkiory Sanga learned advocates for the applicants and in the presence of Mr Michael Ngoboko, and Mr John Mwakifamba learned state attorneys for the respondent. A J KIREKIANO JUDGE. 30.1.2025. 9

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/325130/source_file/bc8174bb3ea4fecc/REVISION_FINAL.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/dr-wilbroard-peter-slaa-v-republic-criminalprocedure-tanzlii-2025--6a3ea5243b1caa912981a335

Prepared on 14 October 2026 · Esheria