

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

CRIMINAL APPLICATION NO. 6 OF 2021

LENATUS DAMIANO PEMPULA..... APPLICANT

VERSUS

**1. THE PREVENTION AND COMBATING
OF CORRUPTION BUREAU (PCCB) 1st RESPONDENT**

**2. DIRECTOR GENERAL OF THE PREVENTION
AND COMBATING OF CORRUPTION
BUREAU (PCCB) 2nd RESPONDENT**

**3. REGIONAL BUREAU CHIEF (RBC)
OF PCCB – RUKWA 3rd RESPONDENT**

10/08/2021 & 03/09/2021

RULING

Nkwabi, J.:

In this application, the applicant is seeking an order of this court for the respondent to return the applicant's motor vehicles named in the chamber summons. The applicant too prayed for costs. The application was preferred under section 9(3) of the Prevention and Combating of Corruption Act No. 11 of 2007 Cap 329 R.E. 2019 and section 391 and section 392A of (1) and


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(2) of the Criminal Procedure Act Cap 20 R.E. 2019. The chamber summons is supported by the affidavit of the applicant himself.

Apart from filing the counter-affidavit, the respondents filed a notice of preliminary hearing. On the 1st day of the hearing, the hearing of the preliminary objection was carried out by way of oral submissions. The applicant was deftly represented by Mr. Mathias Budodi, learned counsel. The respondents were commendably represented by Mr. Fortunatus Mpangamila and Mr. Mohamed Kassim, learned State Attorneys respectively. I am really appreciative of their brisk submissions.

In his submissions, in support of the first limb of the preliminary objection, Mr. Fortunatus learned counsel for the respondents argued that the application was brought prematurely against section 6 (2) of the Government Proceedings Act Cap.5 R.E. 2019 where the applicant ought to have issued to the respondent a notice of 90 days. Mr. Fortunatus added that, had he done that, they would have replied to the notice and he could have not brought this application.

Mr. Budodi, learned Advocate responded firmly to the effect that the two points of objection are baseless at law, they are misconceptions of the provisions of the law on which the respondents based their objection. He further elaborated that on the 1st point of objection, the marginal notes of the Government Proceeding Act speak about Civil Proceedings against the Government and that here, the application is not a civil proceeding, it is a criminal proceeding since it is a criminal application. He insisted that their application emanates from criminal statutes, the Prevention and Combating of Corruption Act and referred this court to the sections which are cited in their chamber summons. This proceeding is not of civil nature, the first leg of objection is baseless it be dismissed, Mr. Budodi, stressed.

In rejoinder, Mr. Fortunatus learned Advocate advanced that the point of objection is meritorious. The learned counsel did not understand the provisions he cited. They ought to have submitted the notice of 90 days.

I have had adequate time examining the arguments of both counsel on this first limb of preliminary objection, I disagree the submission of the learned

advocate for the respondents. The section is clear on the marginal notes that the section refers to matters of civil nature. Mr. Budodi is barked, in his making reference to the marginal note, by **Abdala Kumbuka v.**

Republic [1980] TLR 289 (CAT)

"In Tanzania it is been held that the marginal notes can be and are referred to if necessary."

I am inclined to accept the argument of the counsel for the applicant. This limb of objection is flawed and is respectively declined.

I now turn to consider the 2nd limb of preliminary objection. On the second point of objection in respect of non-joinder of necessary party c/s 6(3) (5) of the Government Proceedings Act of the AG or Solicitor General, Mr. Fortunatus maintained that there is such non-joinder of the AG or the Solicitor General hence he prayed the application be dismissed.

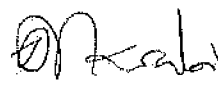
Mr. Budodi, in rebuttal, argued on the 2nd ground of objection on non-joinder of AG Solicitor General that General and AG have no audience in criminal proceedings. He referred me to section 7(e) of the Prevention and

Combating of Corruption Act & section 8(2) (c). The proper party in this proceeding are those impleaded as per the provisions he cited, he expanded.

The Preliminary Objection is baseless and they be dismissed so that the application is heard on merit, Mr. Budodi observed.

In rejoinder on this point of objection Mr. Fortunatus strenuously contended that section 6 (3) of Government Proceedings Act requires joining the AG & Solicitor General as parties in the application. He insisted, failure to comply with section 6 (3) of the Act, the application is then brought incompetently in Court.

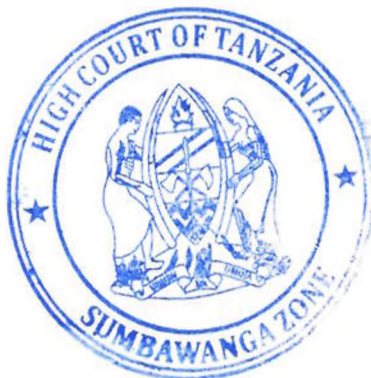
I have generously deliberated the vying assertions, of both parties in this criminal application. I am of the settled mind that the preliminary objection is, with respect, misconceived and ought to be dismissed. In proceedings of criminal nature, neither the Attorney General nor the Solicitor General have audience. The person who may have audience is the DPP. The DPP enters such appearance under the Criminal Procedure Act, Cap 20 R.E 2019.

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In view of the Overriding objective Principle, the preliminary objection is devoid of merits, both limbs of the preliminary objection are dismissed. I order that the application to be heard on merits. If the DPP will be minded, he may invoke the Criminal Procedure Act for his appearance. On the other hand, if the applicant deems it fit and necessary, he may amend his application to join the DPP. Since this is a criminal application, I make no orders as to costs.

It is so ordered

DATED and signed at SUMBAWANGA this 3rd day of September 2021.




J. F. Nkwabi

Judge

Court: Ruling is delivered in open court (via video conference) this 3rd day of September, 2021 in the presence of Mr. Fortunatus Mpangamila, learned State Attorney for the Respondents, and the appellant present in person.

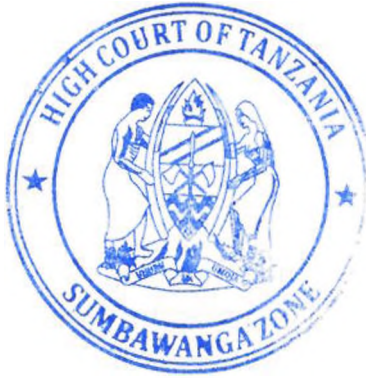



J. F. Nkwabi

Judge

Order 1. Hearing of the application on 20th October, 2021

2. Parties to appear.




J. F. Nkwabi
Judge
03/09/2021