

**IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 35 OF 2019

PAUL KISABO.....PETITIONER

VERSUS

THE ATTORNEY GENERAL.....RESPONDENT

RULING

Last order and ruling 07/10/2020

Masoud, J

This petition challenges the provision of section 148(5)(d)(v) of the Criminal Procedure Act, [Cap. 20 R.E 2019] (CPA) on fronts of its constitutionality. There is however a recent decision of the Court of Appeal of Tanzania (CAT) in **Attorney General vs Dickson Sanga**, Civil Appeal No. 175 of 2020, which finally and conclusively determined the constitutionality of the whole of the provision of section 148(5) of the CPA. Rival submissions of the counsel for the petitioner and respondent have all been considered. They relate to the competence of this petition as challenged by the respondent's counsel on the reason of being res judicata.

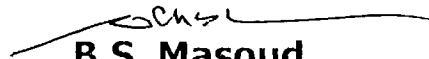
The rival submissions are on the record. I need not reproduce them here in any detail given the nature of the issue I am called upon to determine. I must, however, make it clear that the rival submissions confirm that there is no dispute as to the existence of the CAT decision which finally and conclusively determined the constitutionality of section 148(5) of the CPA.

One point is clear though that the determination by the CAT in the said case directly affects the competence of this petition as this court can no

longer go all over again to try the same matter which has already been conclusively determined by the CAT as aforesaid. Whether or not this petition was already in this court prior to the determination of the constitutionality of section 148(5) of the CPA by the CAT is in my view irrelevant. What is crucially important is that the constitutionality of the impugned provision, which is at issue in this public interest petition, has already been finally and conclusively determined by the CAT in the case of **Dickson Sanga** (supra) also of a public interest nature. What is also important is that this petition is still pending in this court after the CAT determination on the Constitutionality of section 148(5) of the CPA in the said case of **Dickson Sanga** (supra).

Consequently, this petition cannot stand as the issue of the constitutionality of section 148(5) of the CPA has already been finally and conclusively determined as aforesaid. The petition is accordingly struck out for reason of being res judicata as submitted by the counsel for the respondent. Since the petition was in the nature of public interest, I will not make any order as to costs.

It is ordered accordingly.


B.S. Masoud
07/10/2020