

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

CRIMINAL REVISION NO. 3 OF 2020

(C/F the District Court of Mwanga at Mwanga Criminal Case no. 11 of 2019)

DEOGRATIUS S/O BENEDICT @ KOMBA.....1ST APPLICANT
KENEDY S/O KUNDAEL@ MLAY.....2ND APPLICANT
THEOPHILIUS S/O ERNEST @ KAHIGWA.....3RD APPLICANT
WESLEY S/O KALESHU @ MWEMEZI.....4TH APPLICANT
VERSUS
THE REPUBLIC.....RESPONDENT

RULING

14/9/2020, 3/12/2020

MWENEMPAZI, J

The applicants urge this court to revise ruling and order of the District Court of Mwanga at Mwanga dated 20th December, 2019. On the material date the court issued an order that a prima facie case has been establish against the applicants in respect **of Criminal Case No. 11 of 2019** in which they were charged with the offence of obtaining goods by false pretence c/s 302 of the Penal Code, Cap 16, R.E. 2002. The applicants alleged that there exists a commercial relationship between the parties hence such order was erroneous. The application was brought **under section 372 of the Criminal Procedure Act**, Cap. 20, R.E. 2019, (CPA) and supported by sworn affidavit of Mr. Joseph G.A Masanja, Applicant's advocates which the

respondent disputed and filed Preliminary objection on two points of law as follows;

1. The application is incompetent as it is prohibited by the law.
2. In the application is incompetent for the wrong citation of the revised edition which is not yet into force.

During hearing the applicant was represented by Mr. Joseph Masanja learned advocate whereas the respondent was represented by Ms. Agatha Pima, State Attorney.

On the first point of objection, Ms. Pima argued that, the application is filed under S. 372 of CPA against an interlocutory order. However, under section 372(2) of the CPA as amended by Act No. 28/2002 revision is not allowed as the order had no effect of finalizing the matter. Thus, the applicants had the chance to wait until final determination of the matter as at that moment the change would be determined. She argued that, on that point this revision has no merit and if should be dismissed and the case be remitted back to the lower court to be finalized at the trial.

Ms. Pima went on arguing on the 2nd point of objection that, in this application, the applicants have cited the law Revised Edition of 2019 while the same has not yet been set to operate as the Attorney General has not yet published in the Government Gazette. Further that, Written Laws (Amendment) ACT No. 3 of 2020 which has amended the law of Revision ACT, Section 39 (4) until now the law has not yet been published and since the Attorney General is the authorized person to work on that and he has not done so, the laws are not yet operational. She finally opined that, the

application has been brought under the wrong law and prayed that the application to be dismissed so that the case proceeds in the lower court.

In reply, Mr. Masanja argued that, the applicant has cited a proper law and that, according to GN. N. 140 of 2019 published February, 2019 all laws have now been revised to be R. E 2019 therefore this application is proper in law. He argued that, according to the circumstances, the applicant found it proper to come to this temple of Justice for revision. Mr. Masanja also argued that, although the learned state attorney submitted that the law has prohibited this application be made, but the said section allows the application to be brought before this court for revision. He prayed that, this revision to be done since the applicants will suffer more if the application will not be allowed.

After I have gone through trial court's proceedings as well as both parties' submission, the issue for determination is whether the preliminary objection raised are meritorious.

Starting with the first point of objection, the applicants brought this application under section 372 of the CPA which reads;

372.-(1) The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying 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.

(2) Notwithstanding the provisions of subsection (1), no application for revision shall lie or be made in respect of any preliminary or interlocutory decision or order of a subordinate court unless such decision or order has the effect of finally determining the criminal charge.

The revision at hand emanates from the ruling which established whether the applicants had the case to answer or not. After parties made submissions whether prima facie has been established the trial court made its findings that the same is established and informed the applicants to prepare their defence. Instead they preferred this revision that the trial magistrate erred in her findings.

The above cited provision clearly stipulated that no revision can be done on interlocutory orders unless such order has finally determined the case. Interlocutory orders are those kind of orders passed by a court during the pendency of a suit/case, which do not determine the substantive rights of the parties in respect of the circumstances of the case. Generally, as rightly submitted by the respondent, it is my considered view that, the said ruling subject to the revision at hand is an interlocutory order that did not determine the case to its finality.

Apart from that, section 230 of CPA clearly states the situation where the Court finds the accused with no case to answer, the remedy is to dismiss the charge and acquit the accused. Meanwhile section 231 shows that when there is case to answer the accused should proceed by giving his defence in modality explain in the subsection thereafter. In the circumstance, since the trial magistrate found the applicants with case to answer the way forward as

per section 231 of the CPA is for them to mount their defence and not file Revision since the ruling made did not end the case. This point of objection is therefore meritorious and I allow it.

Regarding the 2nd point of objection, as rightly submitted by the applicant, the laws have already been revised through Government Notice No. 140 of 2020 that was endorsed by the Attorney General on 28th February, 2020. A total of 62 laws including the CPA have been revised and published as Revised Edition 2019 and have incorporated amendments including and up to November, 2019. In that regard, the 2nd point of objection lacks merit and the same is overruled.

In lieu of the above, application for revision is dismissed for being prematurely brought before this court. The case file should be remitted back to the trial court and proceed on merit where the applicants have been given right to defend themselves. I give no order as to cost.

It is so ordered.

Dated and delivered at Moshi this, 3rd day of December, 2020.


T. M. Mwenempazi
Judge
03/12/2020