

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 90 OF 2020

*(Originating from Economic Crime Case No. 87 of 2019 Resident
Magistrates Court of Dar es salaam Region at Kisutu)*

DONATI PRIMI SALLA..... APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS..... RESPONDENT

RULING

Date of Order: 26/07/2021.

Ruling date: 30/07/2021.

E. E. Kakolaki, J

By way of chamber summons supported by affidavit and supplementary affidavit sworn by one **Donati Primi Salla**, the applicant, this court has been moved to call for, inspect and examine the record in Economic Crime Case No. 87 of 2019, which is pending before the Resident Magistrates Court of Dar es salaam Region at Kisutu, so as to satisfy itself of the correctness, legality or propriety of the findings and orders as well as the regularity of the proceedings therein. Further to that the court has been invited to give directions as it considers necessary for the interest and ends of justice. The application which is strenuously contested by the respondent who preferred to file a counter affidavit to that effect, has been brought under section

44(1)(a) of the Magistrates Courts Act [Cap. 11 R.E 2019] hereinafter referred to as MCA read together with section 372 of the Criminal Procedure Act, [Cap. 20 R.E 2019] to be referred herein as CPA.

Briefly as gathered from the affidavit and supplementary affidavit, the applicant was indicted before the Resident Magistrates Court of Dar es salaam Region at Kisutu in Economic Crime Case No. 90 of 2019, facing two counts on the charges of Obtaining Credit by False Pretence; Contrary to section 305(a) of the Penal Code, [Cap. 16 R.E 2002] as amended and one count of Money Laundering; Contrary to section 12(d) and 13(a) of the Ant Money Laundering Act, No. 11 of 2006, read together with paragraph 22 of the 1st schedule to and section 57(1) and 60(2), both of the Economic and Organised Crime Control Act, [Cap. 200 R.E 2002]. That, since his first appearance before the Court on 26/08/2019 his case was put on mentions and adjournments until 16/03/2020 when he raised preliminary objection on points of law regarding the reasonability and probable cause under which the complaint on the offences charges with were preferred before the court and prayed for dismissal of the charge. The objection was successfully challenged by the respondent for want of court's jurisdiction as committal court to inquire into legality or propriety of the charges as the court found to have lacked jurisdiction for want of consent and certificate from the DPP conferring it with jurisdiction to try the case. The court therefore rejected to dismiss the charge and discharge or acquit the applicant which the findings and orders the applicant is seeking this court to revise in this application on the grounds that the same are nullity for want of correctness and legality or propriety at law.

When the application came for hearing the applicant appeared unrepresented whereas the respondent proceeded under services of Ms. Tully Helela, learned State Attorney and both parties were heard viva voce. Submitting in support of his application the applicant adopted both his affidavit and supplementary affidavit to form part of his submission. The court was informed that, in the pendency of this application the DPP vide the Nolle Prosequi filed in court on the 19/07/2021 withdrew all the charges against him before a new case was preferred against him on two counts of Obtaining Credit by False Pretence; Contrary to section 305(a) of the Penal Code, [Cap. 16 R.E 2002] as amended. The applicant argued the charges against him in Economic Case No. 87 of 2019 are tainted with illegality and procedural impropriety as there was no reasonable and probable cause for preferring them against him as per the requirement of section 128(2) of the CPA. On the basis of those submissions and other grounds assigned in both affidavit and supplementary affidavit, the applicant invited the court to find the application has merit by making a declaratory orders that the charges are tainted with illegality and procedural impropriety.

Retorting the applicant's submission Ms. Helela submitted that, as the applicant conceded that the charges against him have been already terminated then the application before the court is overtaken by event. That aside she argued the alleged order or ruling issued 16/03/2020 which is being assailed by the applicant does not exist. Even if it is assumed the same exists which is not the case, still could not be revised for being interlocutory orders as it was held in the case of **Simon Michael and 5 Others Vs. R**, Criminal Appeal No. 313 of 2018 (CAT-unreported). It was her submission

therefore that the application is unmeritorious and prayed for its dismissal. In rejoinder submission the applicant insisted and reiterated his submission that he challenged the reasonableness and probable cause behind institution of his charges in Court, thus argued the assertion by the respondent that this application has no merit is incorrect and unfounded. When prompted by the court as to whether the committal court had jurisdiction to inquire into the propriety of the charges the applicant conceded that it had none but was quick to respond that all what the court retained was the advisory jurisdiction as held in the cases of **Jumane Rajabu Vs. R**, (1988) TLR 144 and **Republic Vs. Farid Hadi Ahmed and 21 Others**, Criminal Appeal No. 59 of 2015 (CAT-unrepted). As to the case of **Simon Michael and 5 Others** (supra) relied on by the respondent the applicant riposted, the same is distinguishable as what is being challenged in this application is not an interlocutory order. He therefore argued the court to find merits in this application and grant the sought orders. With all these submissions the real question this court is called to answer in the course of inspection and examination of the committal court record is whether the proceedings in the said court contain any incorrectness, illegality, impropriety or otherwise irregularity.

I have dispassionately followed and considered the fighting arguments of both parties as well as visiting the proceedings in which the applicant is seeking this court to inspect and examine, more specifically the proceedings and/or ruling or orders made on 16/03/2020 where allegedly the applicant challenged the legality and propriety of the charges. What has been revealed out of that inspection and examination of the record is non-existence of the

complained of point of objection raised by the applicant on 16/03/2020, against the charges that were facing him and the order or ruling rejecting it as claimed by the applicant. For the purposes of clarity I reproduce what appears in the original proceedings of the court on the said 16/03/2020:

16/03/2020

CORAM: Hon. Chaungu, RM.

FOR REP: Mzava.

ACCUSED: Both present.

CC: SOPHIA.

SA: Inv not complete.

Sgd: RM

16.03.2020

ACCD: I be allowed to see the RM i/c.

Sgd: RM

16.03.2020

CRT: Prayer allowed.

Sgd: RM

16.03.2020

ORDER: Mention 30.03.2020

Sgd: RM

16.03.2020

What is gleaned from the above excerpt of the proceedings does not support the applicant's assertion that he picked up the alleged preliminary objection against the charges that were facing him and that there was an order rejecting it. The record speaks that he requested to meet the Resident Magistrate in-charge and his prayer was granted. A further glance of an eye during inspection of the record has unearthed no incorrectness, illegality or impropriety of the proceedings, leave alone the fact that the charges facing the applicant were terminated in court on the 19/07/2020, thus rendering the whole application meaningless and unmeritorious for being overtaken by event as rightly submitted by Ms. Helela for the respondent.

In the alternative the applicant while quoting the cases of **Jumanne Rajabu** (supra) and **Farid Hadi Ahmed** (supra) argued that in the premises where the court lacks jurisdiction to entertain a certain matter has advisory role to play by advising the prosecution to take action, in which in this case it failed to do when found it had no jurisdiction to inquire into the legality or otherwise propriety of the charges. It is true as stated in both cases that the subordinate court being a committal court to the court of trial and having been convinced that the charge is defective, the most action the magistrate can do is to advise the prosecution to withdraw the charge and nothing more. However in this case as already found herein above the issue of defectiveness of the charge was never raised by the applicant to convince the magistrate that it is defective so that he could play his advisory role as

submitted by the applicant. I therefore find the argument is wanting and dismiss it.

In view of the above clear position of the facts and law, I find the application is without merit and therefore remain with no option than to dismiss it, which I hereby do.

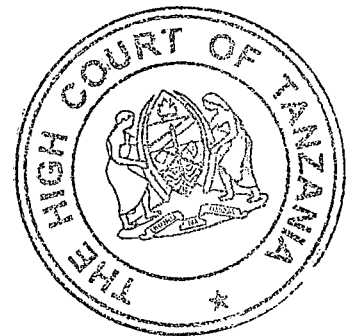
It is so ordered.

DATED at DAR ES SALAAM this 30th day of July, 2021.

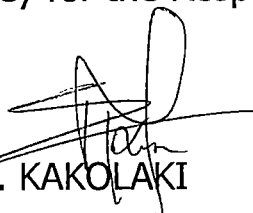

E. E. KAKOLAKI

JUDGE

30/07/2021



Ruling delivered today 30th day of July, 2021 in the presence of the applicant in person, Ms. Tully Helela, State Attorney for the respondent, Ms. Asha Livanga, Court clerk and State Attorney for the Respondent.


E. E. KAKOLAKI

JUDGE

30/07/2021

