

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SUMBAWANGA
AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 23 OF 2021

*(Originated from Criminal session Case No. 02/2019 at the High Court of Tanzania at
Sumbawanga)*

THE REPUBLIC.....APPLICANT

VERSUS

MACHILIA MBASA.....RESPONDENT

RULING

Date of last order: 10/08/2021

Date of Ruling: 13/08/2021

NDUNGURU, J.

The applicant in this application, the Republic has brought this application under Sections 9 (1), 10(1) (2) and 392A (1), (2) (3) (a) of the Criminal Procedure Act, Cap 20 Revised Edition 2019. In this application, the applicant prays for the following orders:

- (i) That the respondent be removed from the prison and handled to the Regional Crimes Officer for Katavi Region so as to assist him to investigate his complaint lodged by him before the said Regional Crimes Officer.***
- (ii) That the respondent be returned back to Mpanda prison after his assistance to the Regional Crimes Officer for Katavi Region.***
- (iii) Any other order this honourable court may deem fit and just to grant.***

The chamber application is duly supported by the affidavit duly sworn by one Mwatum O. Hassan, the Deputy Regional Crimes Officer for Katavi Region. Reasons for this application are contained at paragraph 4,5,6,7 and 8 of the affidavit accompanying the application.

Briefly, the reasons for the application are that upon his arrest respondent raised complaint of misconduct against the police officers who arrested him. His complaint is that the police officers from Katavi illegally took from him 6,000,000/= that respondent has been complaining on it before various guests who pay official visit to Mpanda prison where he was

remanded during preliminary inquiry now transferred to Sumbawanga prison to attend his trial before the High Court.

That following the complaint raised the matter was reported to RPC who later ordered investigation file be opened against the suspected police officers. That investigation process being going on the assistance of the respondent as a complainant is needed. But the fact that he is at Sumbawanga prison, his removal from Sumbawanga prison to the office of RCO Katavi is equally needed for accomplishing investigation process.

When the application was called up for hearing Ms. Safi Kashindi Aman, the learned State Attorney appeared for the applicant /Republic while the respondent appeared in person (unrepresented).

When the State Attorney was given an opportunity to submit in support of the application briefly referred to the reasons for the application as I have stated above which are contained in affidavit.

In his submission, the respondent did not object to assist investigation or to be returned back to Mpanda prison. In his submission, the respondent is resisting to be handed to police authority worrying for his safety due to what he experienced while at the police station. The

respondent submitted that in the course of investigation of the same matter the police officers followed him and recorded statement at Mpanda prison where he was remanded before being brought to Sumbawanga for his trial.

Having considered the submissions of the parties and examined the grounds stated in the applicant's affidavit, the striking question in this application is whether there is any justification for this court to grant the application.

To the best of my understanding, the police machinery is the specific organ of the state which is responsible for maintaining public order and safety, enforcing the law, preventing, detecting and investigating criminal activities. In performing their functions particularly investigation, the police are not limited to go wherever they can get gather information related to the issue they are investigating on provided the proper procedures are observed. In the same footing when the police are investigating any matter are free to enter to the prison for that purpose provided they observe prison regulations put in place.

For the purpose of convenience, I grant the application only by ordering the respondent be returned back to Mpanda prison where he can

easily offer assistance in the investigation process in terms of distance. Further to that, the trial of the case which the respondent is facing is scheduled and will soon be conducted at Mpanda, I find it proper for the respondent to be returned to Mpanda prison.

It is therefore ordered that the respondent be returned to Mpanda prison where the Regional Crimes Officer for Katavi may easily access to without unnecessary delay and costs.

The application is granted to that extent and scope.

It is so ordered.




D. B. NDUNGURU

JUDGE

13/08/2021