

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

CRIMINAL REVISION NO. 07 OF 2022

REPUBLIC APPLICANT

VERSUS

SALVATORY MOAMEDY SANYA 1ST RESPONDENT

MAULID KHAMIS WARAKA 2ND RESPONDENT

***(Arising from the proceedings of the District Court of Mkurunga
at Mkurunga in Committal Criminal Case (PI) No. 3 of 2021)***

RULING

11th and 11th August, 2022

KISANYA, J.:

This revision arises from the proceedings of District Court of Mkurunga at Mkurunga (henceforth the “committal court”) in Committal Criminal Case (PI) No. 3 of 2021. It was initiated, *suo motu*, under section 372 of the Criminal Procedure Act, Cap. 20, R.E. 2022 (the CPA) following a letter authored by the Resident Magistrate In-charge of Mkurunga District Court to the Judge In-charge of this Court.

In terms of the record, the respondents and other two persons namely, Benito Michael Kivike and Kassim Bushiri Kayombo were arraigned before the committal court on 13th April, 2021. The offence laid against them

was murder contrary to sections 196 and 197 of the Penal Code, Cap. 16, R.E. 2019 (now R.E. 2022). It was stated in the particulars of the offence that, on 27th day of March, 2021, at Mwalusembe area within Mkuranga District in Coast Region, the quartet murdered one Goodluck Alex Jackson @ Mchungaji.

Following a *nolle prosequi* filed by the prosecution, Benito Michael Kivike and Kassim Bushiri Kayombo were discharged by the committal court on 7th October, 2021. At the instance of the prosecution, the learned Resident Magistrate of the committal court went on committing the respondents to this Court under section 246(1) of the CPA. In the course of preparing the committal file for purpose of forwarding it to this Court, the District Resident Magistrate Court In-Charge detected that there was no information which had been filed in the High Court and served to the District Court. In his letter dated 6th December, 2021, the learned District Resident Magistrate Court In-Charge asked for guidance and direction. It is the said letter which prompted institution of the instant criminal revision.

At the hearing of this matter the applicant/Republic was represented by Fidesta Uisso, learned State Attorney whereas the respondents who appeared in person were also represented by Deogratias Kibasa, learned advocate.

In their respective submissions, Ms. Uisso and Mr. Kibasa were at one that the committal proceedings were conducted in contravention of the law. Their submission was premised on the reason that the committal proceedings were conducted while the investigation was incomplete, and the information had not been filed before this Court. Mr. Kibasa went on referring the Court to section 246(1) of the CPA and the case of **Warioba Mwita vs R**, Civil Appeal No. 242 of 2018 (unreported).

On the way forward, both learned counsel urged this Court to nullify the committal proceedings and the committal order made thereon. In lieu thereof, the Court was moved to order the committal proceedings to be conducted afresh.

Having gone through the record and considered the submissions from both parties, it is clear that sole issue for my determination is whether the committal proceedings and the resulting committal order are tainted with illegality or impropriety.

To answer the issue in respect of this matter, I propose to start by considering first, the procedure in relation to Committal of an Accused Person for Trial to the High Court, as provided for under sections 243 to 251 of the CPA as follows. Some of the procedures are to the following effect: *First*, the accused person be presented to the committal court and together

with the charge upon which it is proposed to prosecute him. *Second*, the magistrate of committal court is required to read over and explain to the accused person the charge laid against him without asking him to plead to the charge. *Third*, the committal court may admit the accused to bail (if the offence is bailable) or remand him to prison pending completion of the investigation. *Fourth*, upon, completion of the investigation, the Director of Public Prosecutions files, in the High Court, an information together with three copies of each of the statements of witnesses and any documents containing the substance of the evidence of any witness. *Fifth*, after an information is filed in the High Court, the Deputy Registrar is required to cause a copy of it to be delivered to the committal court. *Sixth*, the committal court conducts the committal proceedings after receiving the copy of information and the notice filed in the High Court. The latter procedure is provided for under section 246 (1) of the CPA which reads:

“Upon receipt of the copy of the information and the notice, the subordinate court shall summon the accused person from remand prison or, if not yet arrested, order his arrest and appearance before it and deliver to him or to his counsel a copy of the information and notice of trial delivered to it under subsection (7) of section 245 and commit him for trial by the court; and the committal order shall be sufficient authority for the person in charge of the remand prison concerned to

remove the accused person from prison on the specified date and to facilitate his appearance before the court.”

(Emphasize supplied)

In the light of the above cited provision, it is apparent that committal proceedings cannot be conducted if an information has not been filed in the High Court and its copy served to the committal court.

Reverting to the instant application, the respondents were committed to this Court while there is no information filed by the Director of Public Prosecutions under section 245 (6) of the CPA. Further to this, the Deputy Registrar of this Court did not serve the committal court with the copy of the information. It appears that the learned magistrate was misled by the prosecution who addressed the committal court as follows: -

"We have already filed information against the 1st and 2nd accused person, the same is already received by this Court. I pray to proceed with committal today."

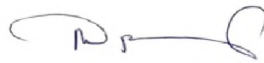
Despite the said submission, the learned magistrate was duty bound to go through the record and satisfy himself whether the committal court had received the information from the Deputy Registrar of the Court. Undoubtedly, had the prosecutor and learned magistrate being cautious, they would have not conducted the committal proceedings for want information filed to High Court.

On the account of what I have stated herein, I agree with Ms. Uisso and Mr. Kibasa whose submissions suggest that the committal proceedings and committal order are tainted with illegalities and impropriety. In that regard, this Court is enjoined to intervene by revising them.

In the circumstances, I invoke the revisional power bestowed on this Court by section 372 of the CPA by quashing the committal proceedings and committal order dated 7th October, 2021. In lieu thereof, the committal court is hereby directed to proceed where the matter ended before the committal proceedings conducted on 7th October, 2021.

It is so ordered.

DATED at DAR ES SALAAM this 11th day of August, 2022.



S.E. Kisanya
JUDGE

Court: Ruling delivered this 11th day of August, 2022 in the presence Ms. Fidesta Uisso, learned State Attorney, the respondents and their counsel Mr. Deogratias Kibasa, learned advocate.



A handwritten signature in black ink, appearing to be "S.E. Kisanya".

S.E. Kisanya
JUDGE
11/08/2022