

**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. 9 OF 2022

MACHUMU WAZIRI CHUMU APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

(Arising from Criminal Case No. 75 of 2021 at Kigamboni District Court)

RULING

15th September & 13th October, 2022

KISANYA, J.:

This is an application for revision predicated under section 372 (1) of the Criminal Procedure Act, [Cap. 20, R.E. 2022] (the CPA), and section 44 (1) (a) of the Magistrates' Courts Act [Cap.11, R.E. 2019] (the MCA). It arises from the proceedings of the District Court of Kigamboni at Kigamboni (the trial court) in Criminal Case No. 75 of 2020. Supporting the application is an affidavit sworn by Machumu Waziri Chumu, the applicant herein.

According to the supporting affidavit, the applicant was arraigned before the trial court for the offence of malicious damage to property contrary to section 326(1) of the Penal Code [Cap. 16, R.E. 2019] (now R.E. 2022). It was alleged that on 28th June, 2021 at Ras Kigomani area within Kigamboni District

in Dar es Salaam Region, the appellant did willfully and unlawfully destroy 260 sisal plants, one well, 50 pillars and 1 toilet by plucking and breaking them, all valued at TZS 13,682,520/-, the properties of one Al-Miskry Salehe.

The applicant pleaded not guilty to the charge. His counsel raised a preliminary objection on a point of law that the trial court has no jurisdiction to entertain the matter. The said objection was overruled on 17th February, 2022. In the course of hearing the prosecution case, the applicant wrote a letter urging the trial magistrate to recuse herself from presiding the matter. His prayer was based on the contention that the learned trial magistrate had already made up her mind that the applicant was guilty even before hearing his side of the story. It turned out that the applicant apologized for the letter of recusal.

In the midst of the trial, the prosecution prayed to amend the charge sheet to reflect what was deposed by the complaint when cross-examined by the applicant's counsel. Despite the objection from the applicant's counsel, the learned trial magistrate granted the prayer. It is also the applicant's case that the trial magistrate made a strong words/remark against the applicant and his lawyers. That prompted the applicant to write another letter asking the trial magistrate to recuse herself from the conduct of the case but no avail. Upon the

trial magistrate declining to recuse herself, the applicant resolved to file this application. The prayers sought for in the chamber summons are as follows:-

- 1. That, this Honourable Court be pleased to call for and examine the records of Criminal proceedings of the District Court of Kigamboni at Kigamboni dated 14th June, 2022 vide Criminal Case No. 75 of 2021, the Republic vs Michumu Waziri Chumu, now pending before Hon. W. Mgaya, SPR., for the purposes of satisfying itself as to the correctness, legality or propriety of the findings recorded and as to the regularity of the proceedings therein.*
- 2. That, this Honourable Court be pleased to call for or direct inspection of records of the District Court of Kigamboni vide Criminal Case No. 75 of 2021 and give such directions as it considers may be necessary in the interest of justice.*

Upon being served with the chamber summons and affidavit, the respondent contested the application vide a counter affidavit sworn by Lilian Rwetabura, Senior State Attorney. In addition, the respondent filed a notice of preliminary objection on the following points of law:-

- 1. That, this Honourable Court has no jurisdiction to entertain this revision application.*
- 2. That, the application is incompetent for contravening the provision of section 372(2) of the Criminal Procedure Act, Cap. 20, R.E. 2022.*

At the hearing of the preliminary objection, the applicant appeared in person. He was also represented by Messrs Nyaronyo Mwita Kicheere and Andrew Job Kanonyele, learned advocates. On the other hand, the respondent was represented by Ms. Hellen Moshi, learned Senior State Attorney.

Addressing the Court on both points of objection, Ms. Moshi submitted that the applicant claims in paragraph 23 of the supporting affidavit that the prosecution was granted leave to amend the charge without taking into account the submission made by his counsel. She went on to submit that the ruling made by the trial court did not dispose of the criminal matter before the trial court. It was therefore her argument that revision cannot arise from an interlocutory decision and that this Court lacks jurisdiction to determine the matter. To cement her argument, the learned Senior State Attorney cited the case of **Freeman Aikael Mbowe and 8 Others**, Misc. Criminal Application No. 126 of 2018 (unreported).

Ms. Moshi further submitted that section 372(2) of the CPA bars revision from preliminary or interlocutory decision or order which does not determine the criminal charge. That being the case, she was of the view that the application is incompetent as held in the case of **Freeman Aikael Mbowe** (supra). She therefore moved this Court to strike out the application.

Responding, Mr. Kicheere submitted that the provision of section 372(1) of the CPA cited in the chamber summons has two parts. It was his contention that, the first part deals with revision of the record of any criminal proceedings before subordinate court for this Court to satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed. He further submitted that, the second part is in respect of revision as to the regularity of any proceedings of any subordinate court. He further argued that this Court has mandate to revise the matter under section 373 of the CPA.

The learned counsel went on to submit that the applicant was complaining against any order or decision of the subordinate court. Referring the Court to paragraphs 25 and 26 of the supporting affidavit, he contended that this application is in respect of the proceedings of the subordinate court. It was his further contention that the application challenges the manner in which the trial magistrate has been harassing the applicant. That being the case, Mr. Kicheere was of the firm view that the trial court proceedings are being conducted in contravention of the right to a fair trial which is guaranteed under Article 13(6) of the Constitution. He therefore implored this Court to be pleased to consider the application is competent and that it is not against an interlocutory decision or order

Mr. Kanonyere was in agreement with Mr. Kicheere. He added that that the authority relied upon by the learned Senior State Attorney did not discuss the irregularity of the proceedings of the subordinate court and thus, distinguishable from the case at hand. He contended further that the matter could not be dealt with administratively because his complaint's letters were not worked upon. In conclusion, the learned counsel prayed that the preliminary objection be dismissed.

In a brief rejoinder, Ms. Moshi reiterated her submission in chief that this Court has no jurisdiction to determine the matter in terms of section 372(2) of the CPA. She further argued that section 373 of the CPA is not applicable where the application is made by the party to the case.

Having examined the chamber summons and supporting affidavit and considered the submissions made by the parties' counsel, the issue for determination at this stage is whether the objections are meritorious.

It is common ground that both limbs of objection are premised on the ground that this application arises from the preliminary or interlocutory decision of the trial court. At the outset I agree Mr. Kicheere that the provision of section 372 (1) of the CPA empowers this Court to call for and examine the record of any criminal proceedings before a subordinate court. However, I am also at one

with Ms. Moshi that, section 372(2) of the CPA bars application for revision in respect of any preliminary or interlocutory decision of the subordinate court which has no effect of finally determining the criminal matter. The section 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 position that application for revision shall not lie in respect of preliminary or interlocutory decision or order is also provided for under section 43(2) of the MCA as follows:

"Subject to the provisions of subsection (3), no appeals or application for revision shall lie against or be made in respect of any preliminary or interlocutory decisions or order of the district court or a court of a resident magistrate unless

such decision or order has the effect of finally determining the criminal charge or the suit."

In the instant case, the applicants counsel do not dispute that the law bars application for revision in respect of preliminary or interlocutory decision or order of the district court or a court of a resident magistrate which does finally determining the criminal charge. The contended that the application for revision is in respect of the proceedings of the trial court.

Reading from the provision of section 372 (1) of the CPA it is clear that application for revision is aimed at enabling this Court to satisfy itself not only on the "correctness, legality or propriety of the finding, sentence or order recorded or passed", but also "as to the regularity of any proceedings of any subordinate court. With due respect to Mr. Kicheere, that law is settled an application for revision cannot stand if there is no finding, sentence or order made by the subordinate court. This stance was stated in the case of **D.P.P. vs Booken Mohamed Ally**, Criminal Appeal No. 217 of 2019 (unreported), in which the Court of Appeal underlined as follows on the provision of section 372(1) of the CPA:

"On looking at the above powers vested in the High Court under those provisions of the law, it seems to us that there

must be a finding, order or sentence passed by the subordinate court for the High Court to revise.”

It appears that the applicant was aware of the above position. The first relief in the chamber summons is specific that the trial court’s proceedings are dated 14th June, 2022. Also applicant has asked this Court to call and examine the record of the trial court and satisfy itself as to the “correctness, legality or propriety of the findings recorded” and as to the regularity of the proceedings. It follows that, Mr. Kicheere’s contention that the application is for revision of the proceedings of the trial court is not supported by the pleadings.

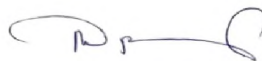
Reading further from paragraphs 23 and 24 of the supporting affidavit, I agree with Ms. Moshi that the trial court proceedings subject to this application are related to the prosecution’s prayer to amend the charge. It was stated that applicant’s objection to the prayer was overruled by the trial court and that the submission made by the applicant’s counsel was not considered. In other words, the applicant is aware that the trial court made its findings on the proceedings of 14th June, 2022. He also appended the ruling dated 14th June, 2022. Nothing to suggest that the said ruling disposed of the criminal charge laid against the applicant. Upon overruling the applicant’s objection, the trial court went on take the applicant’s plea on the amended charge sheet. As the

applicant pleaded not guilty to the charge, the case was fixed for hearing on 30th June, 2022.

In view of the foregoing finding, I am at one with Ms. Moshi that this application for revision is in respect of an interlocutory or preliminary decision which did not dispose of the criminal matter pending before the trial court. Being guided by the above stated provision of law, the application is incompetent before this Court for want of jurisdiction and contravening section 372(2) of the CPA.

It is for the above reasons that, I uphold the preliminary objections and proceed to strike out this application.

DATED at DAR ES SALAAM this 13th day of October, 2022.



S.E. KISANYA
JUDGE

Court: Ruling delivered this 13th day of October, 2022 in the presence of the applicant and Mr. Andrew Kanonyele, learned advocate for the applicant and in the absence of the respondent.



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

S.E. KISANYA
JUDGE
13/10/2022