

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

MISC. CRIMINAL APPLICATION NO. 79 OF 2022

GODFREY JOHN SAIMON APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Application for revision of the proceedings and order of the Resident
Magistrate's Court of Dar es Salaam at Kisutu in Economic
Crime Case No. 24 of 2020)**

RULING

29th September & 10th October, 2022

KISANYA, J.:

On the 17th March, 2020, the applicant herein and other six persons (who are not a party to this application) were charged in the Resident Magistrate's Court of Dar es Salaam at Kisutu (henceforth "the committal court") with offences of leading organized crime, contrary to section 4(1)(a) of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, Cap. 200 R.E. 2002 [now R.E. 2022] (the EOCCA), stealing contrary to section 258 contrary to sections 258 and 265 of the Penal Code [Cap. 16, R.E. 2002] (now R.E. 2022), stealing by servant contrary to sections 258 and 271(b) of the Penal Code (supra) and money laundering contrary to sections 12(d) and 13 (a) of the Anti-Money Laundering Act, 2006 read together with paragraph 22 of the First Schedule

to, and sections 57(1) and 60(2) of the EOCCA. It is worth nothing here that, the value of money involved in all offence is Tshs. 2,263,620,000 and that the case is at committal stage as the investigation is underway.

That notwithstanding, the applicant has filed this application under section 372 of the Criminal Procedure Act, Cap. 20, R.E. 2019 (now R.E. 2022) (the CPA), and section 44 (1) (a) of the Magistrate's Courts Act [Cap.11, R.E. 2019) and section 2(1)(3) of the Judicature and Application Act [Cap 358, R.E. 2002] praying for the following orders: -

- 1. That this Honourable Court be pleased to call for and inspect as case may be examine the record of the proceedings of Economic Crime Case No. 24 of 2020 in the Resident Magistrate's Court of Dar es Salaam at Kisutu for purposes of satisfying itself as to correctness, legality or propriety of the orders recorded or passed the proceedings of the above mentioned Economic Crime Case and as to the regularity of the proceedings therein.*
- 2. That, this Honourable Court be pleased to clarify the point of law which were (sic) misjudged by the Respondent in prior to the institution proceedings of Economic Crime Case No. 24 of 2020 in the Resident Magistrate's Court of Dar es Salaam at Kisutu*
- 3. That, this Honourable Court be pleased to grant any other orders and relief as it may deem fit and just to grant.*

The application is supported by an affidavit sworn by the applicant on 9th August, 2022. It is being disputed by the respondent who among others, filed a notice of preliminary objection on the points of law to the following effect:-

1. That, this 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 CPA.

When the matter came up for hearing of the preliminary objection, the applicant appeared in person, while the respondent had the legal services of Ms. Hellen Moshi, learned Senior State Attorney.

The learned Senior State Attorney argued the both points of objection conjointly. She submitted that this application is made under section 372 of the CPA which empowers this Court to call for and examine record of the subordinate court when there is a sentence or conviction or finding made thereto. She further argued that section 372(2) of the CPA bars application for revision against an interlocutory decision or order which does not finally determine the criminal matter. The learned Senior State Attorney went on to submit that the committal court had not issued decision or order which finally determine the criminal matter. It was therefore, her argument that this Court lacks jurisdiction to determine the application. In that regard, Ms. Moshi urged this Court to strike out the application for being incompetent.

In reply, the applicant submitted that this Court has jurisdiction to determine the application for revision under section 372 of the CPA and section 44(1)(a) of the MCA. It was his further contention this is an application for revision of the

proceedings of the committal court and thus, not barred under section 372(2) of the CPA. His argument was based on the contention that the law prohibits revision of interlocutory decision or order. He was of the further view that an application for revision can be filed even if there is no decision made by the trial court. In that regard, the applicant prayed that the preliminary objection be overruled.

In her rejoinder, Ms. Moshi reiterated that revision arises when the subordinate's court decision conclusively determine the matter before it

I have considered the submission for and against the preliminary objection. It is common ground that the applicant has moved this Court to revise the proceedings of the Resident Magistrate's Court of Dar es Salaam at Kisutu in Economic Crime Case No. 20 of 2022. I therefore find it imperative to restate that section 372 (2) of the CPA and 44(1)(a) of the MCA empower this Court to call for and examine the record of any criminal proceedings before a subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of the finding, sentence or order recorded or passed, and as to the regularity of any proceedings of that court. However, as rightly argued by Ms. Moshi, section 372(2) of the CPA prohibits an application for revision in respect of any preliminary or interlocutory decision or order which does not finally determine the criminal charge. It provides:-

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."

Reading from the above cited provision of law, I am of the considered view that, existence of finding, sentence or order of the subordinate court is one of the requirement for application for revision. Thus, this Court cannot exercise its revisionary powers if there is no decision, order or sentence made by the subordinate court. I hold so basing on the decision of the Court of Appeal in the case of **D.P.P. vs Booken Mohamed Ally**, Criminal Appeal No. 217 of 2019 (unreported). In that case, this Court revised the committal proceedings which were still pending in the subordinate court. When the matter reached the Court of Appeal, it had this to say after citing 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.”

Further to above, the Court of Appeal went on to hold that:

*“...it is our view that, if the High Court, in **Dodoli Kapufi’s case** (supra) was found to have no powers to grant bail to applicants on a matter which was still under committal proceedings without prior order which could have vested jurisdiction on it, the matter at hand is even more serious. We say so because, one, there was no illegality, incorrectness or improprieties which ought to be corrected in terms of section 372 of the CPA. Neither was there any order, finding or sentence which needed to be corrected in terms of section 373(1) (a) of the CPA. Two, there was no committal order by the subordinate court as the matter was still in pre-committal state which the High Court was prohibited to take cognizance of it.”*

In the present case, the applicant does not dispute that the committal court has not made any decision, order or sentence. Pursuant to the record, the committal court did not issue any order, decision, sentence or finding which finally disposed the criminal matter before it. Being guided by the above position of law, I hold the view that this application is incompetent before this Court for want of decision, order or sentence. This is also when it is considered that the case is at committal stage because the offence of leading organized crime and money

laundering preferred against the applicant and other accused persons are triable by the High Court Corruption and Economic Crime Division.

In view of thereof, the preliminary objection is hereby upheld. Accordingly this application is hereby struck out for being incompetent.

DATED at DAR ES SALAAM this 10th day of October, 2022.



S.E. KISANYA
JUDGE
10/10/2022