

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

CONSOLIDATED CRIMINAL REVISION NOS. 5 & 6 OF 2022

*(Arising from Miscellaneous Criminal Application Case No. 29 of 2021 before the
Resident magistrates' Court of Dar es salaam at Kisutu)*

BETWEEN

- 1. WARTSILA TANZANIA LIMITED**
- 2. STANDARD CHARTERED BANK TANZANIA LTD APPLICANTS**
- 3. SANJAY RUGHANI**

VERSUS

- JAMES BURCHARD RUGEMARILA 1ST RESPONDENT**
- VIP ENGINEERING AND MARKETING LTD 2ND RESPONDENT**

RULING

5th & 5th October, 2022

MWANGA, J.

The applicants **Wartsila Tanzania Ltd** on one hand, **Standard Chartered Bank Tanzania Ltd** and **Sanjay Rughani** on the other hand had filed Criminal Revision Nos. 5 and 6 before the High Court, seeking



orders of the court to call for, examine and revise the proceedings, rulings and order of the Resident Magistrate Court of Dar es Salaam at Kisutu in Miscellaneous Criminal Application No. 29 of 2021. With leave of the court, the two applications were consolidated on the 4th October, 2022.

The applicants **Wartsila Tanzania Ltd** was represented by Mr. Daud Ramadhan, the learned counsel and **Standard Chartered Bank Tanzania Ltd** and **Sanjay Rughani** were represented by Mr. Jonathan Wangubo, learned counsel. On the other hand, the respondents **James Burchard Rugemarila** and **VIP Engineering and Marketing Ltd** were represented by Mr. Sisty Bernard and John Chuma, the learned counsels.

When the matter was called on for hearing on 5th October, 2022, the respondents raised three point of preliminary objections that: -

1. Under section 372(1) and (2) of the Criminal Procedure Act, Cap. 20 R.E 2022 the High Court has no jurisdiction to revise the interlocutory orders in the ruling of the Resident Magistrate Court of Dar es Salaam at Kisutu dated 7th June, 2022, as the said orders did not finally determine Misc. Criminal Application No. 29 of 2021.
2. That the application is incompetent because the record of revision attached to the chamber summons supported by the affidavit of



Advocate Gasper Nyika does not include all the proceedings and orders since 27th October, 2021.

3. The Civil Revision Nos.5 & 6 of 2022 is an abuse of court process for having been incompetently commenced with the sole aim of derailing the hearing of Miscellaneous Applications No. 29 of 2021.

It is worthwhile to note that, point of preliminary objection No.3 was dropped by the learned counsel for the respondents, hence remaining only with two.

The learned counsel Mr. Sisty Bernard initiated his submission by stating that, Section 372(2) of the Criminal Procedure Act, Cap. 20 [R.E 2022] do not allow application for revision against any preliminary or interlocutory decision or order of the subordinate court unless such decision or orders has the effect of finally determining criminal charge. He also cited Section 43 of the Magistrate Courts Act, Cap.11 [R.E 2022] that, no appeal or application for revision shall lie against or be made in respect of any preliminary or interlocutory decision or order of the district court or Court of Resident Magistrate unless such a decision or order has effect of finally determining criminal charge or suit.



It was his view that, the ruling issued by the lower court was in respect of service of summons, hence there was no final decision which this court has to revise.

It was his contention that, the application that was filed at Kisutu is for the respondent to seek leave to conduct private prosecutions. He argued further that section 372(2) of Criminal Procedure Act and Section 43 of Magistrate Courts Act contains the word 'criminal charge' and none of the applicants has been charged; therefore the application for revision before this court is incompetent.

The learned counsel cited several authorities; in **Vodacom Tanzania Public Ltd Company V. Planet Communication Ltd**, Civil Appeal No.43 of 2018; **Jiteshi Javantilali Ladwa & Another V. Dhirajlali Walji Ladwa**, Civil Application for Revision No. 154 of 2020; **Junaco (T) Ltd & Another V. Marel Mallac Tanzania Ltd**, Civil Application No. 473 of 2016; **SGS Societe Generale & Another V. VIP Engineering and Marketing Ltd**, Miscellaneous Civil Application No. 35 of 2022 (HCT). That the cited authorities provides for a settled position of the law that interlocutory ruling or order is not appealable or revisable, save where it has effect of finally determine the charge, Suit, or petition. It was his



view that, none of the applicants had been charged before the Resident Magistrate at Kisumu, and that the said ruling has not finalized the matter, hence it is an interlocutory order.

At to the second point of preliminary objection, the learned counsel stated that no any copy of the proceedings sought to be revised has been attached except an interlocutory ruling and some other documents. He added that, what ought to be attached were the proceedings sought to be revised so as to let the court determine illegality, impropriety, incorrectness that they have been claimed. In support of his contention, he cited authorities in the case of **Standard Chartered Bank & 3 Others V. VIP Engineering & Marketing Ltd**, Consolidated Civil Application No.76 &90 of 2016 at page 17.18.19 &20, where the Court of appeal discussed the importance of attaching the proceedings. He argued that, non-inclusion of such vital documents makes this application incompetent.

On the hand, the counsel for the applicants refuted the claims by the learned counsel for the respondents. Mr, Daudi Ramadhani submitted that the application before this court is not only challenging the ruling and order of the Kisumu Resident Magistrate Court dated 7th June, 2022 but rather it



seek to revise all proceedings in Application No. 29 of 2021 as the conduct of proceedings are totally confused because of lack of fair trial.

He referred this court in Section 372(1) of the Criminal Procedure Act, that this court has powers to exercise its discretion ***Suo moto*** to examine the appropriateness, corrections or legality of lower court proceedings which include orders or ruling which have been issued. He submitted that; these powers do not stop an individual to invite this court to exercises its revisional powers. He submitted that, the learned counsel for the respondents had misinterpreted the provision of section 372(1) of the Criminal Procedure Act.

The learned counsel repeatedly insisted on violation of the principle of total confusion. He expounded it by stating that, the Hon. Resident Magistrate assumed that Dr. Nguluma Advocate and himself were appearing for the applicants while in fact they were appearing as a matter of courtesy because the summons indicated their names specifically.

While referring to section 372(2) of the CPA, learned counsel was of the view that, the ruling of the Resident Magistrate at Kisumu was not an interlocutory order since it has decided on the point of service of summons to its finality. He cogently added that, at no point in time the applicant will



be able to challenge on the issue of service of summons, otherwise the consequences will be unfortunate for the management of cases in Tanzania because likely the case would start afresh, hence multiplicity of cases. He wound up his submission by explaining the purpose of summons that whoever is faced with any charge is made aware of the said charges and is afforded with opportunity to enter his or her defence.

Mr. Jonathan Mwangubo, learned counsel vehemently submitted that preliminary point of law was misconceived, misguided and untenable because it has limited itself to the interlocutory order of the ruling of the Resident Magistrate Court dated 7th June, 2022. He canvassed that, the application was in respect of moving the court to deal with the whole proceedings and not ruling only.

His arguments relied on the principle of total confusion. He cited the **Fahari Bolters Ltd V. Registration of Companies**, [2000] TLR. 102 which was quoted with approval in the case of **Stanbic Bank Ltd V. Kagera Sugar Ltd**, Civil Application No.57 of 2007, where one of the issues for determination was whether the orders were interlocutory in nature; at page 10-11. The court of appeal discussed about the distinction between an interlocutory order and confusion, illegality or impropriety in



the proceedings. He stated that Mr. Daudi Ramadhani, counsel for the applicant and Mr. Nguluman Advocate who represented Wartsila Tanzania Limited were presumed to be watching brief of the applicants in the lower court at Kisutu. He argued that, the call for revision was not based on interlocutory order but proceedings generally.

It was his contention further that, the cases of **SGS Societe Generale & Another V. VIP Engineering and Marketing Ltd** and **Vodacom Tanzania Public Ltd Company V. Planet Communication Ltd** (Supra) is distinguishable because it was not based on principle of total confusion but rather on determination of preliminary objection.

With reference to the second preliminary objection, the learned counsel argued that it does not fit in the case of **Mukisa Biscuits Manufacturing Co. Ltd V. West End distributors [1969] E.A** because it is not a point of law. He reiterated further that, they have submitted all necessary documents for court to determine the application such as ; notice of the date of mention issued by the court on 22/11/2021, affidavit of proof of service of Mr. Sisty Bernard, affidavit of Gasper Nyika filed in court on 24/12/2021, affidavit of Rugemalira filed on 20/01/2022, counter affidavit of Gasper Nyika filed on 10/2/2022 and submissions of the 3rd and 7th



respondents in Application No.29 of 2021 and finally, submissions and ruling dated 7th June, 2022. He lastly contended that, the learned counsels for the respondents have not shown to the court the missing documents which are subject of the revision.

I have gone through this highly contesting submission by both counsels and derived three important issues that requires determination by the court as follows: -

- i. whether the court was properly moved by the applicants by invoking Section 372(1) of the Criminal Procedure Act, Cap 20[R.E.2022].
- ii. whether the orders or ruling by the Resident Magistrate Court in Miscellaneous Criminal Application No.29 of 2021 are interlocutory in nature.
- iii. Whether attachment of court proceedings is mandatory in an application for revision.

In response to the first issue, Section 372(1) of the Criminal Procedure Act, Cap. 20[R.E.2022] provides for discretionary powers of the high court to call for and examine the record of any criminal proceedings before the 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. The issue whether the court should do it ***Suo moto*** or on application of a party is well answered in the case of **Consolidated Holding Cooperation V. Sackson Andrew Luhanjo and 2 Others**, Criminal Appeal No.126 of 2010(Unreported) CAT. The court provided the holding that:-

'In our considered view, the interpretation of Section 372 poses no difficulty. The section is very clear. In our reading of the section, we do not get the impression that the legislature intended to exclude third parties. On the contrary, it is evident thereat that the High court may call for and examine the record of any criminal proceedings for the purposes of satisfying itself as to the correctness, legality or propriety of any finding, or order...passed...For our purposes, the catchword in the section is 'any'. In this sense, the high court has powers over any criminal proceedings, irrespective of the party or person who initiated them. It follows that under section 372 the high court has broad powers to include third parties'

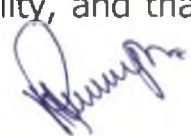
The court held further that;



'in view of the position we have taken on the interpretation of the section 372, it is clear that the high court was wrong holding that the appellant herein had no locus standi to initiate the application for revision'

With reference to the above authority, the application for revision by the applicants is properly before the court and the same can be brought ***suo moto*** or either by a third party.

This now take me to the second issue as to whether orders or ruling by the Resident Magistrate Court in Miscellaneous Criminal Application No.29 of 2021 are interlocutory in nature. Reference is made in Section 372(2) of the Criminal Procedure Act, Cap. 20[R.E.2022] which prevents application for revision 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 learned counsel for the respondents argued that, none of the applicants had been charged before the Resident Magistrate at Kisutu, and that the said ruling has not finalized the matter, hence it is an interlocutory order. Mr. Daudi Ramadhani learned counsel was of the view that, ruling in Kisutu was not an interlocutory order since it has decided on the point of **service of summons** to its finality, and that



at no point in time the applicant will be able to challenge on the issue of service of summons, otherwise the consequences will be unfortunate for the management of cases in Tanzania.

With respect to foregoing, the substantive application Misc. Criminal Application No. 29 of 2022 before the Resident Magistrate Court of Dar es Salaam at Kisutu, which was about application for private prosecution, has not been decided to its finality. I am therefore convinced to hold that, matters related to the service of summons as in the circumstances in this application, however conclusive may be, are not subject to revision or appeal. It fits squarely under the provision of section 372(2) of the Criminal Procedure Act and Section 43 of the Magistrate Court Act. They are in the nature of interlocutory orders.

I wish to state further that, if the order in respect of service of summons can be subject of revision or appeal by the High court, the inevitable result would be a flood of revision applications, hence defeating the purposes of Section 372 of the of the Criminal Procedure Act and section 43 of the Magistrate Courts Act.

I would argue further that, the purpose of summons is to inform a party that an action has been filed against him or her and intends to procure his



attendance to contest the claims in the court. In the current application No. 5 & No. 6 of 2022, the learned counsels for the applicants who were present in court had been engaged to represent the same applicants who are contesting that they have not been served with summons properly. This does connote the fact that, the said applicants are already aware of the existing criminal proceedings against them in the Resident Magistrate Court of Dar es salaam at Kisutu.

Again, the issue whether summons was served in conformity with the law or not can as well be determined at the appellate level when the matter is concluded to its finality and when the applicants feels that their legal rights have been violated, hence this point of preliminary objection is sustained for it being meritorious.

In dealing with the issue whether attachment of court proceedings is mandatory in an application for revision, one has to be mindful and look at the spirit of Section 372 of CPA as a whole. The fact that court can call the records of orders, ruling or proceedings *suo moto* or on application by a party who feels that his legal rights have been violated, it therefore goes without saying that, attachment of court proceedings to be revised are not mandatory. Order or ruling attached to the application are sufficient to



enable the other party to the case to know exactly what is being contested. Having looked at chamber summons and affidavit of the applicants, the prayers sought for revisions are specific proceedings of the lower court i.e proceedings of 16th November to 21st June, 2022.

In his submission, Mr. Jonathan Wambugo, leaned counsel pleaded specifically that the revision geared towards; revision of notice of the date of mention issued by the court 22/11/2021, affidavit of proof of service of Mr. Sisty Bernard, affidavit of Gasper Nyika filed in court on 24/12/2021, Rugemalira filed on 20/01/2022, counter affidavit of Gasper Nyika filed on 10/2/2022 and submissions of the 3rd and 7th respondents in Application No.29 of 2021 and submissions and ruling dated 7th June, 2022. Some of those documents are within the attention of the parties to the case and custody of the court after the records had been called for. Hence this point of preliminary objection is overruled for not meeting the test enshrined in **Mukisa Biscuits Manufacturing Co. Ltd V. West End distributors (Supra).**

Having said that, the preliminary objection by the respondent is sustained to the extent that matters related to the service of summons, as in the circumstances of this application, however conclusive may be, are



not appealable or revisable. It is in nature of interlocutory orders as envisaged under Section 372 (2) of the Criminal Procedure Act, Cap. 20 R.E. 2019.

Therefore, the preliminary objection is sustained and an application is hereby struck out. The case file shall be remitted to the Resident Magistrate Court of Dar salaam at Kisutu for other necessary orders. No orders to costs. It is so ordered.


H.R. MWANGA
JUDGE
05/10/2022

ORDER: Ruling delivered in Chambers this 5th day of October, 2022 in the presence of both learned counsels for the applicants and respondents.


H.R. MWANGA
JUDGE
05/10/2022