

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA**

AT ARUSHA

CRIMINAL APPLICATION NO. 31 2022

PETER JOSEPH CHACHA..... APPLICANT

VERSUS

D.P.P.....1ST RESPONDENT

ALMACHIUS MUCHUNGUZI,

OCD OF ARUSHA DISTRICT.....2ND RESPONDENT

N.W. MWAKATOBÉ,

RESIDENT MAGISTRATE.....3RD RESPONDENT.

RULING

27/10/2022 & 10/11/2022

MWASEBA, J.

This application was brought by the applicant under **Section 93 (1), (2), and (3) of the Criminal Procedure Act**, Cap 20, R.E 2002 (Now R.E 2022) and under Information of D.P.P Act. The applicant is challenging the act of the D. P.P to seize his properties without certificate of seizure and sell the same for the reason that they were unclaimed properties. The application is supported with an affidavit sworn by the Applicant himself.

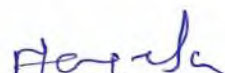


Prior to the hearing of the application, learned state attorney for the 1st respondent raised one point of Preliminary objection, to wit:

1. That, this application is incompetent and bad in law for moving the court in wrong provision of the law.

At the hearing of the raised preliminary point of objection, the applicant appeared in person, unrepresented whereas Ms Eunice Makala, learned State Attorney appeared for the 1st respondent. The hearing which was done orally proceeded ex-parte against the 2nd and 3rd respondent since they had never entered appearance before the court from day one despite of being duly served.

Supporting her raised preliminary objection, Ms Makala told the court that this application is incompetent and bad in law since the court has been moved with the wrong provision of the law. She submitted further that this application has been brought under **Section 93(1) (2) and (3) of the CPA** requesting the D.P.P to give information regarding his vehicle and studio properties which were sold contrary to the order of the court in Criminal Case No. 712 of 2009.

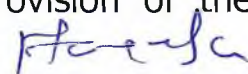
As per the cited provision, the D.P.P will be directed by the President to give information regarding any exhibits of the case and not by the party to the case. She prayed for the application to be struck out. 

Responding to what was submitted by Ms Makala, the applicant beseeches this court to properly interpretate the cited provision. He submitted further that since the D.P.P is working under the directives of the President there is no need to inquire further instructions. He argued further that the notice filed by MS Makala is defective for the reason that in the notice she said she is representing all respondents but during the hearing she submitted that she is representing the 1st respondent only and the 2nd and 3rd respondents never entered appearance nor filed any counter affidavit. He added that the cited provisions were a proper one there is no other provisions regarding this matter.

In a brief rejoinder, Ms Makala apart from reiterating what she had already submitted, she added that their counter affidavit clearly shows that they appeared for the 1st respondent only. Further to that, since the 2nd and 3rd respondents are government employees the D.P.P has the mandate to represent them too.

Having considered the rival submissions from both parties, this court will now determine the merit of the raised Preliminary Point of Objection and the main issue is whether the application is competent before this court.

The 1st respondent's counsel argued that this court was not properly moved since the applicant cited a wrong provision of the law, the



argument which was strongly opposed by the applicant for the reason that the section was a proper one for this kind of application.

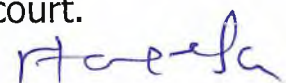
Section 93 (1), (2) and (3) of the CPA provides that:

*"(1) Notwithstanding anything contained in this Act, the Director of Public Prosecutions may, **with the previous sanction of the President**, exhibit to the High Court, against persons subject to the jurisdiction of the High Court information for all purposes for which the Director of Public Prosecutions may exhibit information on behalf of the Republic in the High Court in Tanzania.*

(2) Such proceedings may be taken upon every such information exhibited by the Director of Public Prosecutions.

(3) The High Court may make rules for carrying into effect the provisions of this section." (Emphasis is mine).

Guided by the cited provision, it is crystal clear that the D.P.P will furnish the information regarding a certain exhibit upon the sanction given by the President. For easy of understanding the word "Sanction" in **Black's Law Dictionary, eighth edition means** "Official approval or Authorization". Thus, The D.P.P cannot be moved by a party without any approval or permission from the President to furnish the needed information of the certain exhibits. Thus, the prayers tabled before this court does not tally with the provision which has been cited to move the court.



It has been decided in numerous cases that wrong citation of the provision of the law renders the application incompetent. As it was held by the Court of Appeal in the case of **Edward Bachwa & 3 Others vs The Attorney General and Another**, Civil Application No. 128 of 2006 (Unreported) that:

"... the answer is found in an unbroken chain of authority to the effect that wrong citation of the law, section, sub section and/ or paragraph of the law or non-citation of the law will not move the court to do what it is asked and renders the application incompetent."

In the circumstances, the application is hereby struck out since the Court has not been properly moved to hear and determine the application.

Ordered accordingly.

DATED at **ARUSHA** this 10th Day of November, 2022.



N.R. Mwaseba

N.R. MWASEBA

JUDGE

10/11/2022