

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CRIMINAL REVISION NO. 178 OF 2020**

*(Arising from Economic Case No. 71 of 2017 Kisutu Resident
Magistrate's Court)*

SALUM YASSIN MTANI1st APPLICANT
HASHIM HASSAN OMARY.....2nd APPLICANT
ZAMBA PINAU @ LIKOTI.....3rd APPLICANT
SALUM RAMADHAN ZONGO.....4th APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of last order: 15/7/2021

Date of Ruling: 14/04/2022

S.M. KULITA, J.

The applicants herein filed this application for revision that this court should call, inspect and examine the proceedings for the Economic Case No. 71 of 2017 of Kisutu Resident Magistrate's Court, hereinafter referred to as RM's Court, for the purpose of

satisfying itself as to the correctness, legality or propriety of findings and orders recorded or passed, and give directions as it considers necessary in the interest of justice. The application has been made under section 372 of the Criminal Procedure Act [Cap 20 RE 2002], hereinafter referred to as CPA, read together with section 44(1)(a) of the Magistrate Court's Act [Cap 11 RE 2002], hereinafter referred to as MCA.

In the Counter Affidavit Counsel for the Respondent, Mr. Genus Tesha, Senior State Attorney raised a Preliminary Objection that the application is untenable in law because it arises from interlocutory orders.

Submitting on that Preliminary Objection Mr. Tesha stated that the application by the applicants arises from the interlocutory orders, the decisions which are not appellable nor revisable according to the law. Therefore this court has no powers to entertain.

Mr. Tesha also submitted that section 178 of the CPA prohibits the High Court from interfering the PI (Preliminary Inquiry) cases which are still at the lower courts whose investigation is on progress. He said that the High Court can only deal with those PI cases upon the Director of Criminal Investigation (DPP) submitting the Information to it under section 93(1) of the CPA for trial.

As for section 372 of the CPA cited by the Applicants in the chamber summons, the counsel submitted that it is applicable where the superior court finds illegality in the lower court records and decides to rectify it accordingly. He said that in doing so there must be a Ruling, Order or Judgment which is to be rectified by the superior court. Challenging on the application at hand the counsel stated that there is no any decision of the lower court sought to be revised by this court. He asserted that the said PI case from which this application arises, is still under investigation.

In the reply thereto the Respondents had nothing to submit, they left the court to decide upon considering their right that they have been in remand custody for a long time.

From the above submissions, the issue to be determined is whether this court has jurisdiction to determine the matter which is still under committal at the subordinate court. According to section 178 of the CPA no criminal PI case shall be brought under cognizance of the High Court unless it has been previously investigated by a subordinate court and the accused person has been committed for trial before the High Court.

The complained matter, Economic Case No. 71 of 2017 Kisumu Resident Magistrate's Court, being the Economic PI Case, cannot

be entertained by this court at this stage while the DPP has not yet informed the court on that.

The applicants have moved this court under section 372 of the CPA arguing that the High Court has powers to supervise on regularity over the subordinate courts. The said section 372 of the CPA provides for "Power of High Court to call for records". It states as follows;

"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".

But such powers applies for the cases which the lower courts have jurisdiction to try. It is not applicable for the PI cases, which are basically tried by the High Court. As per the Court of Appeal case namely **DPP V. BOOKEEM MOHAMED @ ALLY AND 7 OTHERS, Criminal Appeal No. 217 of 2019, CAT at DSM (unreported)** the High Court has no powers to entertain matters which are still under committal proceedings without prior order which could have vested jurisdiction on it.

Section **373 (1) (a) of the CPA** vests the High Court with revisional powers over criminal proceedings in the subordinate courts, particularly, in accordance with the provisions of sections 366, 368 and 369 of the CPA. Under those provisions of the law, the High Court is empowered to; alter sentences including enhancing them; suspending the sentences and granting bail to a prisoner pending the hearing of his appeal; and taking of additional evidence if it is necessary to do so. On looking at the powers vested in the High Court under those provisions of the law, it seems to me that there must be a finding, order or sentence passed by the subordinate court for the High Court to revise.

In this matter, particularly at para 26 of the Affidavit in support of the chamber summons the High Court is asked to dismiss the charge and discharge the applicants while committal proceeding is still underway at the subordinate court.

In the case of **Republic v. Dodoli Kapufi and Another, Criminal Revision No. 1 and 2 of 2008 (unreported)**, the Court of Appeal was confronted with an akin scenario. It discussed among other issues whether or not the High Court in the particular circumstances of bail applications has jurisdiction to grant bail while the accused persons had not yet been committed

to it and who were before a subordinate court. After a long discussion the Court stated as follows:

*"... it is difficult to appreciate how the High Court in the instant revision could have the power to grant bail to the applicants pre-committal and in the absence of any committal order under section 246 (1) of the CPA, which would have submitted them to its jurisdiction. Not only that, save for exhibit to the High Court of an information by the D.P.P. under section 93 (1) of the CPA, **section 178 creates a bar against the taking of cognizance by the High Court, of a criminal case, unless the same has been properly investigated by a subordinate court and the accused person has been duly committed to it for trial**" (emphasis is mine)*

The applicants herein alleged that "the Magistrate at Kisumu RM's Court overruled their concern in the Economic Case No. 71 of 2017 in which they had alleged that, the said matter should be dismissed for the prosecution's failure to complete investigation for a long time", and that that led to the matter being severally adjourned, the act which the said applicants alleged to be injustice.

Apart from the said allegation which is a core subject in their applications' affidavit, the Applicants never attached any copy of order, ruling or finding which they are complaining against, for this court to revise. Failure to specify the order, ruling or finding of the RM's Court which they seek for this court to revise implies that there is no illegality, incorrectness or improprieties which ought to be corrected in terms of section 372 of the CPA. As well, the fact that the matter has not yet been fully determined it means there is no order, finding or sentence which can be corrected in terms of section 373(1)(a) of the CPA.

Even if the Applicants had specified and attached the RM's Court order, ruling or any findings that they have been aggrieved with, still this application could have not sustained, as for the nature of the case, that its decision sought to be revised must have been interlocutory, cannot be appealed nor revised. Whatever decision that the RM's Court or the District Court grants in the committal proceeding it must be of interlocutory in nature, as those said courts have no powers to determine such matter to the finality for lacking the jurisdiction.

Therefore, the fact that there is no committal order by the subordinate court, as the matter was still in the committal state, which the High Court is prohibited even to take cognizance of it

until it is committed to it for trial, I can agree with Mr. Genus Tesha, Senior State Attorney that this court has no jurisdiction to revise the matter whose committal proceeding is still pending at the RM's Court.

The application is therefore dismissed for want of merits. It is ordered that the lower court record should be remitted back to Kisumu RM's Court for continuation of committal proceedings.



S.M. KULITA
JUDGE
14/04/2022

