

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 53 OF 2022

PETER MICHAEL MADELEKA APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

17th , & 19th May, 2021

ISMAIL, J.

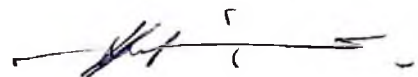
This application has been taken under a certificate of urgency, and this Court is called upon to exercise its revisional powers to call and examine the record of proceedings in Criminal Case No. 69 of 2020, with a view to satisfying itself as to correctness, legality or propriety of any finding, order recorded or passed, and to the regularity of such proceedings.

The application is supported by an affidavit of Paul Emmanuel Kilasa Kisabo, the applicant's counsel, and it sets out grounds on which the application is based.

When the application came up for orders the applicant was represented by Mr. Paul Kisabo, learned counsel, while the respondent was represented by Messrs Nassoro Katuga and Ramadhani Kalinga, learned senior State Attorneys. Before we delved into the substance of the application, I called upon the parties to address me on the propriety or otherwise of preferring revisional proceedings where the trial proceedings sought to be revised had not been concluded.

In his brief submission, Mr. Kisabo argued that the Court has jurisdiction, conferred upon by section 372 (1) of the Criminal Procedure Act, Cap. 20 R.E. 2019; and section 44 (1) (a) of the Magistrates' Courts Act, Cap. 11 R.E. 2019. He submitted that the latter provision stipulates that the Court's supervisory powers may be exercised at any time of the proceedings. He contended that the word "order" is defined under section 2 of Cap. 11 to also mean any other formal expression of the court.

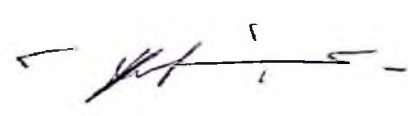
He argued that the orders by the trial court were prejudicial and that they call for examination by this Court through exercise of the Court's revisional jurisdiction. He concluded that the Court has jurisdiction over the matter.



Mr. Katuga held a divergent view in this respect. He argued that orders stated in the affidavit, as the basis for the instant application, are neither appealable nor are they revisable. This is because none of them concluded the matter. This means that the Court has not been properly moved.

Mr. Katuga contended that the Court's revisional powers under section 372 of Cap. 20, can only be exercised where there is illegality or irregularity in the proceedings. This, he argued, would require presence of a record which would show that there was a finality in the matter sought to be challenged. Regarding section 44 of Cap. 11, learned attorney submitted that the same falls under Part IV of the Act, and it talks about additional powers of the Court to supervise lower courts. He argued that this is not a window for the parties. Rather, it is a window for the Court itself.

Extrapolating from numerous court decisions, Mr. Katuga argued, the firm position is that interlocutory orders are not appealable. He argued that this curtailment is intended to ensure that litigation comes to a speedy end instead of stifling it with endless distractions and disruptions that are unnecessary. Learned attorney took the view that the Court has no jurisdiction to entertain the matter.

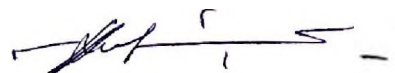
A handwritten signature in black ink, appearing to be 'K. Katuga', with a horizontal line drawn through it.

From the counsel's contending submissions, the sole issue for determination is whether the instant application is, in view of the raised concern, tenable.

As stated by Mr. Kisabo, revisional powers of the Court in respect of criminal matters are vested in it by section 372(1) of Cap. 20 whose substance provides 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."

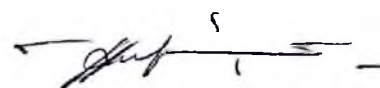
Ideally, each and every finding, sentence or order is amenable to revisional powers of the Court as long as questions of correctness, legality or propriety are the subject of contention by either of the parties to particular court proceedings. The generality of the cited provision is curtailed by the provisions of sub-section (2) that impose a condition that revisional proceedings should only be in respect of the decisions which have the effect of finally determining the charge levelled against the accused person. The said provision states as follows:



"(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."

Mr. Kisabo has deponed in the supporting affidavit and reiterated in his submission that hearing of the criminal case preferred against the applicant is due on 18th May, 2022 at Kisutu. He also conceded that orders sought to be challenged through the instant revision did not finally determine the pending criminal charges. For all intents and purposes, these were interlocutory proceedings against which revision to this Court cannot lie, while the criminal charge against the applicant is yet to be fully determined.

It is worth of a note, that the wording of section 372 (2) is similar or akin to that of section 5 (2) (d) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019, which bars appeals or revisions to the Court of Appeal of Tanzania, against interlocutory decisions of the High Court. The position regarding this provision was accentuated by the Court of Appeal of Tanzania in ***Deogratias Martin @ Kachangaa & 2 Others v. The Director of Criminal Prosecutions***, CAT-Criminal Appeal No. 5 of 2013 (unreported), wherein it was held:



*"... that it is not only preliminary or interlocutory decisions that are aimed against; rather, the provision similarly targets any order of the High Court that does not have the effect of finally determining the criminal charge. **Thus, to the extent that this appeal seeks to impugn an order of the High Court which did not effectively determine the criminal charge, it is obviously incompetent and we, accordingly strike it out.**"*

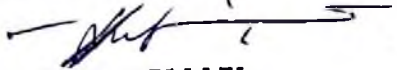
[Emphasis supplied]

Mr. Kisabo has also argued that revisional powers of the Court are also derived from section 44 (1) (a) of Cap. 11. With profound respect, this contention is flawed. The powers of the Court under the cited provision are supervisory and, though they entail calling for and inspecting the records of courts and give directions, such powers are exercised *suo motu*. Most often, these powers are exercised when the Court indulges in the routine inspection or when a complaint is lodged informally. What comes out of this process is directions which must be complied with by courts that are under the Court's supervision. In my considered view, such powers would not extend to the level of entertaining matters initiated through applications by parties.

In the upshot of all this and, on the basis of the cited position of the law, I find this application incompetent. Accordingly, I dismiss it.

Order accordingly.

DATED at **DAR ES SALAAM** this 19th day of May, 2022.



M.K. ISMAIL

JUDGE

19.05.2022

