

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**ARUSHA SUB-REGISTRY
AT ARUSHA**

MISC. CRIMINAL APPLICATION NO 8 OF 2024

(Originating from Criminal Case No 933 of 2007, offence of Murder in the High Court of the United Republic of Tanzania, Arusha)

PETER JOSEPH CHACHA..... APPLICANT

VERSUS

- 1. THE MINISTER OF HOME AFFAIRS 1ST RESPONDENT**
- 2. RPC ARUSHA 2ND RESPONDENT**
- 3. RCO ARUSHA 3RD RESPONDENT**
- 4. OCCID ARUSHA DISTRICT 4TH RESPONDENT**

RULING

29th April 2024

Masara, J

This is a very unusual criminal application. In this Application, which was purportedly made from a previous Criminal case concluded in this Court several years back, the Applicant urges this Court to hold that he is not a criminal! He also impugns unnamed senior Police Officers' procedures adopted for his intended arrest. The Application was made through a

Chamber Summons supported by an affidavit under section 13(1), (2), (3), (4) and (5) of the Criminal Procedure Act, Cap. 20 R.E 2019.

The Applicant's grounds are set out in the affidavit. In the said affidavit the Applicant alleges that the Respondents are trying to arrest him without following the procedure for arrest stipulated by law. That such violations are likely to cause him to suffer bodily injuries which may lead to his death. The Applicant makes several claims regarding ill intentions perpetuated by some police officers who have been in a hunting mission to have him arrested for offences he has not committed. That the motive behind his arrest and or assassination arise from the reports and complaints he has been making regarding properties confiscated from him and which were sold without following down the laid procedures, which properties ought to be restored back to him as he was acquitted in the case involving such properties.

The Applicant requested that hearing of the matter proceeds through video or teleconference due to his apprehension that he will be arrested by the police if sported around the Court premises. Video conference proved futile as the Applicant could not properly connect. I directed that hearing proceeds by way of teleconference. This proved successful as both the Applicant and the learned State Attorney connected.

It is important to note that when this Application was called before this Court, the learned State Attorney for the Respondents, Ms Tusaje Samwel, informed Court that the Application being criminal in nature should have been made against the Director of Public Prosecution (DPP) or join him as a necessary party. She went on to state that the main case against which this Application is based was between the DPP and the Applicant and not against the four Respondents herein. That, in the current Application the Respondents are public officials whose names have not been mentioned, making it difficult for the Respondents and even the Court to apprehend what the dispute is all about and against which individuals.

In response, the Applicant was of the view that the DPP represents all officials mentioned in the Application. That, in criminal case No. 933 of 2007, it was the DPP who prosecuted the Applicant and that he was on acquitted of the charges levelled against him. Further, that from that time the police officers, who are under the Ministry of Home Affairs, are searching for the Applicant in order to arrest him, contrary to section 13 of the Criminal Procedure Act. Hence, the Applicant concluded that the DPP should not run away from his responsibilities to represent all the Respondents.

In a brief retort, Ms Tusaje submitted that failure to name the DPP who was a party to the criminal case mentioned by the Applicant is fatal. Further, that the section cited by the Applicant is irrelevant to the claims made as no arrest warrant has been issued or even requested against him.

This Court, having scrutinised the Chamber Summons and the Affidavit filed in support of the orders sought, and having heard from both parties, feels that the main issue for determination is whether this Application is competent. In fine, I find the Application devoid of merits as I will endeavour to demonstrated hereunder.

The Court is of the view that this Application has no legs to stand on. To begin with, the Criminal case against which it is based was heard and concluded. Any Application arising therefrom will definitely be a nullity, more so when the said Application aims to declare the Applicant innocent or that he is not a criminal.

A careful scrutiny of the Application, reveals that the Applicant aimed at resurrecting the already concluded matter. He categorically submitted that the current Application emanated from Criminal Case No. 933 of 2007, which case was heard and determined by this Court. In other words,

the said Criminal Case No. 933 of 2007 is not a pending matter before this Court. In his submissions in Court, the Applicant conceded to the fact that he was acquitted with respect to the said criminal case, where he stood charged with the offence of murder. That being the case, the current Application cannot properly be based on the said Criminal Case No. 933 of 2007. The acquittal in that case does not absolve the Applicant from other criminal responsibilities arising after such acquittal.

In the case of **University of Dar es Salaam vs Silvester Cyprian and 210 Others [1998] TLR 175**, parties addressed the Court to grant a prayer that was also raised in the main appeal. The main appeal was determined before the application and in responding to the application the Court of Appeal held that: *"The application is incompetent as it is interlocutory to Civil Appeal No. 2 of 1995 which has already been heard by another panel of justices of the Court."*

Similarly, since Criminal Case No. 933 of 2007 is already determined by this Court, the current Application, interlocutory as it is, is lame as it has no legal foundation considering that the Applicant's rights in that case have already been determined. As the Applicant is not alleging continued incarceration in the charges he was acquitted of, the Application aimed at resurrecting the old findings of this Court cannot be sustained.

Further, even if we were to hold that the Applicant could base the Application on the defunct case, the Application would still be incompetent for failure to sue identifiable individuals or join the DPP as a necessary party. As clearly detailed in the Application, the Application emanates from Criminal Case No. 933 of 2007 whose parties were DPP vs Peter Joseph Chacha. In this Application, the Applicant sought to implead different persons in their official capacities; namely Peter Joseph Chacha vs The Minister of Home Affairs, RPC Arusha, RCO Arusha and OCCID Arusha District. The DPP is not a party to the current Application.

When asked to justify his choice of Respondents, the Applicant mainly stated that those are the individuals whose clandestine ploy to arrest him are to be restrained by this Court. The Court is not satisfied with this explanation. An order of this Court should be certain and capable of being enforced. All the four Respondents are named in their official capacities but none is disclosed by their names. Being a criminal Application, the same should have been preferred against named individuals in their personal names. Where the claim is against an office, then the Applicant should have filed the same against the DPP, a person enjoined to represent the government in all criminal cases.

Lastly, the Application is incompetent as the orders sought cannot be issued. In the Chamber Summons, the Applicant claims that among other things that he will ask the Court is that he is not a criminal and that his arrest is made without reasonable ground, that is the arrest (or intended arrest) has been made without reasonable grounds.

For the Court to declare that a person is not a criminal and or his arrest has been made without reasonable grounds, the same has to be done in the main case and would be premised upon a defence raised by an accused person. In this Application the Applicant is mounting a defence outside the main Criminal Case. He does not state in the affidavit that the is being sought on the same criminal accusations that he was charged and acquitted. Even if that was to be the case, it is on record that his innocence in that case was already confirmed. The Court cannot keep on pronouncing the same indefinitely.

From the above, the Application herein is incompetent and cannot be sustained. The same is struck out for being improperly before this Court.

Order accordingly.



A handwritten signature in blue ink, appearing to read "Y. B. Masara".

Y. B. Masara

JUDGE

29th day of April 2024.