

IN THE HIGH COURT OF TANZANIA
CORRUPTION AND ECONOMIC CRIMES DIVISION
AT DAR ES SALAAM

ECONOMIC APPLICATION NO. 1 OF 2022

MATHIAS FRANK RADEKAKI.....APPLICANT

Versus

THE DIRECTOR OF PUBLIC PROSECUTIONSRESPONDENT

RULING

8/03/2022 & 22/03/2022

E.B. LUVANDA, J.

The applicant above named filed this application by way of chamber summons asking the Court to call for the records of an Economic Crime Case No. 81 of 2021, pending at the Resident Magistrate's Court of Dar es Salaam at Kisutu and inspect the correctness and legality. It is a prayer for the applicant that the same be struck out for want of fair administration of justice and direct the subordinate court to immediately release the applicant.

So far the matter was filed under urgency, when it was called for the first time on 25/02/2021, I commissioned for it to be heard and disposed by way of written arguments: argument in chief on 4/3/2022, reply on 8/3/2022, rejoinder on 10/03/2022 and ruling on 16/03/2022. Meanwhile the

respondent was supposed to file her counter affidavit and reply thereto by the applicant on 3/3/2022 and 4/3/2022, respectively. Unfortunately our projection and assumption of smooth operation and running to dispose the application on merit, did not yield the intended result. This is because the respondent upon filing her counter affidavit, staged a notice of preliminary objection comprising of two points of law: One, that the application is incompetent for the absence of committal order and two, the application is incompetent as it contravenes section 372(2) of the Criminal Procedure Act, Cap 20 R.E. 2019. This necessitated reconvening on 8/03/2022, where on the same spirit of urgency, by consensus parties agreed to retain the former schedule in respect of the main application with some modifications and extension here and there, in view of accommodating the preliminary objection to be argued along with the main application.

Ms. Hellen Mushi, Senior State Attorney submitted in support of the preliminary objection that the application is incompetent for the absence of committal order as per section 246(1) of CPA which would grant jurisdiction to this Court to entertain this matter. She cited **DPP vs Bookeem @ Ally and others**, Criminal Appeal No. 217/2019 C.A.T. Mwanza (unreported), where at page 11 referred **Republic vs Dodoli Kapufi and another**,

Criminal Revision No. 1 and 2 of 2008. The learned Senior State Attorney submitted that the matter at hand is still at committal stage and this Court has no jurisdiction to entertain it. That apart from that, the proceeding have no illegality, incorrectness or improprieties which ought to be corrected under section 372 CPA, as the proceedings show there is neither any order, finding or sentence which needs to be corrected in terms of section 373(1)(a) CPA. She cited **Domiano Gadwe vs Republic**, Criminal Appeal No. 317/2016 CAT Arusha (unreported), pages 8, 9 and 10; **Said Hamis and three others vs Maureen George Mbowe Jiliwa**, Civil Application No. 362/17 of 2018 CAT Dar es Salaam, pages 10 and 11; **Freeman Aikael Mbowe and 8 others vs Republic**, Criminal Application no. 126/2018 HC Dar es Salaam, to support her proposition that section 372(2) CPA limits this Court to revise an order which had no effect of finally determining the rights of the accused person.

In opposition of the preliminary objection, Mr. Hudson Benard Ndusyepo learned Counsel for the applicant submitted that the application before the Court is for the Court to apply its supervisory powers and not revisionary powers. That the applicant is praying for the Court to exercise its supervisory powers over the subordinate court by calling for and examining the legality,

correctness and regularity of the proceedings in Economic Crime Case 81/2021 (supra). That this Court with its supervisory powers can make orders and directives it deems fit and appropriate in rectifying such incorrectness and illegalities.

It is true that under the provisions of section 372 CPA, this Court may call and examine records of any criminal proceedings before any subordinate court thereto, for purpose of satisfying itself as to the regularity of any proceedings of any subordinate court. To my view the couching of the wordings of the above provision, does not limit the powers of this Court to invoke it in respect of a finding, sentence or order alone, as suggested by the learned Senior State Attorney. For easy of reference and appreciation, I reproduce the whole version of the said provision, as hereunder. Section 372 Criminal Procedure Act, Cap 20 R.E. 2019, provides

'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' bold added

The next question, is whether this Court can invoke those powers under the circumstances of this application, to call for the records of proceedings in Economic Crime Case 81/2021 pending for committal before the subordinate court. May be to make it clear, committal procedure is an independent stage which is very tricky and technical, in a sense that at that stage neither the subordinate court nor this Court is clothed with jurisdiction over the matter. The jurisdiction to this Court is clothed upon committal order by the subordinate court, committing the accused for trial. To my view, in absence of committal order, no way this Court can chip in the proceedings for committal under the umbrella of supervisory power or by way of calling for records or making any orders to the matter pending for committal. By the way this is not a novel idea, in the case of **The Republic vs Farid Hadi Ahmed and twenty one others**, Criminal Appeal No. 59 of 2015, Court of Appeal at Dar es Salaam (unreported) which was cited by the learned Advocate for the applicant in the submission in chief of the merit of application, at page 15 the apex Court had this to say, I quote,

'When sections 245(3) and 246(2) of this Act are read together, it becomes clear that in committal proceedings the magistrate has no other role to perform in this regard beyond the mere requirement to cause the statements to be

*read to the accused, before it may commit such person for trial to the High Court. In that vein, we hold the view that those matters to which were raised before the RM's court on 3.9.2014 were legal matters to which the RM's court had no jurisdiction to decide. **Those matters ought to have been reserved with a view of raising them in the High Court upon being committed to that court for trial'***

Hereinabove, the apex Court did not say that there is a leeway to attain those matters by this Court through any other procedure apart from committal order. Indeed issues of regularity herein if any, are pegged to the validity of a charge (alleged holding charge), defectiveness of a charge sheet leveled to the applicant at the subordinate court. The question is whether these can warrant intervention by way of supervisory power or calling for lower courts records and whether could warrant granting prayers sought, culminating into striking out the charge and releasing the applicant.

In **Republic vs Dpdoli Kapufi and another**, Criminal Revision No. 1 and 2 of 2008 Court of Appeal of Tanzania (unreported) it overturned an order of this Court granting bail to the respondents therein pre-committal. Reading the wording of the apex Court in its holding one can grasp was sending a

polite reprimand to this Court's guts to dare to make such an attempt, it read,

'...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.' Underscore mine for emphasis.

Another attempt was made by this Court *proprio motu* issued an order by way of directives to the subordinate court where committal proceedings were still pending, to either admit the accused to bail or dismiss the charge and discharge the accused upon expiry of the ultimatum or deadline of a period of a year fixed by this Court. Upon appeal to the apex Court, it was in **DPP vs Bookeem Mohamed @ Ally** (supra) cited by the learned Senior State Attorney, the same orders experienced a hostile reception, ended up being vacated.

Now, should we dare again to sneak to the committal proceedings under the disguise of calling for lower court records allegedly supervisory powers? To my view that will be repeating committing the same mistake corrected by the Superior Court and will be bordering contempt. Convention wisdom and

principle of stare decisis, both dictate me to respect and bow to the dictum above.

The preliminary objection is meritorious, is accordingly upheld.

The application is dismissed.



E.B. Luvanda
Judge
22.03.2022