THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
CRIMINAL REVISION NO. 01 OF 2020
(From the Resident Magistrate's Court of Mbeya at Mbeya, Economic Crime Case No. 33 of 2019)

KHAMIS YUSUPH MLWILO.....1ST APPLICANT
YAHYA RAMADHAN SAID @ MTINANGI.....2ND APPLICANT
TAMIMU SALUM MTELEKE.....3RD APPLICANT
ABDUL HUSSEIN @ MWENDA.....4TH APPLICANT
MUSSA HARUNA MHEPILE.....5TH APPLICANT
JUMANNE HAMIS @ MANGI.....6TH APPLICANT
VERSUS
THE REPUBLIC .....RESPONDENT

RULING

Date of last order: *14/09/2020*
Date of Ruling: *13/10/2020*

NDUNGURU, J.

This application for revision is brought under Section 372 and 373 (i) (b) of the Criminal Procedure Act (R.E. 2002. In this application, the applicants are applying for the following orders:

i. This honourable court be pleased to call for and examine the records of proceedings of the Resident Magistrate's court of Mbeya at Mbeya in RM Economic Crime case No. 33 of 2019 so as to satisfy itself as the correctness and legality of an order of endless court adjournments that the said endless order was issued by (Hon. R.S. Mushi – RM).

ii. That this honourable court be pleased to issue an order directing committal court (Resident Magistrates Court of Mbeya at Mbeya in RM Economic Crime Case No. 33 of 2019 to stop the open – ended police investigation.

This application is supported by the affidavit in which the grounds and reasons for revision are set forth, sworn by Adam M. Murusuli, the Counsel for the applicant.

Upon service, the respondent raised preliminary point of law to effect that:

i. The application is incompetent for wrong citation/citation of a non – existing enabling provision of law.
ii. The application is incompetent for contravening the provision of Section 372 (2) of the Criminal Procedure Act, (Cap 20 R.E. 2002) as amended by Act No. 25 of 2002.
iii. That the application is against non existing order of the court.

When the application was before me for hearing, the applicants were represented by Mr. Othuman Kalulu Senior Advocate while the respondent/ Republic was represented by Mr. Paul Kadushi Principal State Attorney assisted by Mr. Faraja Nchimbi Principal State Attorney.

As a matter of law and practice the court had the duty to resolve the preliminary objection raised by the respondent/ Republic before embarking to the main application.

Before going to the merit of the objection, this court has to satisfy itself as to whether the said preliminary objection raised qualifies to be the objection as provided in the landmark case of **Mukisa Biscuits Manufacturing Co. Ltd. vs. West End Distributors Co. Ltd. (1969) EA** from my looking the preliminary objection raised are on point of law.

Submitting in supporting of the application, the learned State Attorney decided to state with the 3rd time of preliminary objection on the non existing of the said order which the applicant applies this court to revise.

It was the submission of the Learned State Attorney that throughout the record, there is no endless order of adjournment issued by Hon. R.S. Mushi RM. Thus in the absence of such an order which is sought to be revised, the court has nothing to revise and thus renders the applicant's application meaningless. The Learned State Attorney prayed the application to be struck out.

In the alternative, it was the submission of the Learned State Attorney that, the orders sought in the chamber summons which the court is moved to exercise revisionary powers are interlocutory orders. He said

the application being brought under Section 372 with the advent of Written Laws (Miscellaneous Amendment) Act No. 25 of 2002, the court has no jurisdiction to entertain the application because the orders sought do not finally determine the charge.

It was the State Attorney's submission that the fact that the orders prayed to be revised do not determine the finality of criminal charge, the court has no jurisdiction to exercise its revisional jurisdiction. The Learned State Attorney invited the court to get inspiration in the case of **DPP vs. Farid Hadi Ahmed & 9** others, Criminal Appeal No. 96 of 2013 and **The Republic vs. Mwesiga Geofrey Tito Bushahu**, Criminal Appeal No. 355 of 2014 (both unreported).

Adding it was the submission of Mr. Kadushi Learned Principal State Attorney that, in **DPP vs. Farid Hadi Ahmed (supra)** the court of appeal dull with interpretation of Section 372 as amended by Act No. 25 of 2002. He said the wording of Section 372(1) and (2) are clear without ambiguity thus be interpreted the way they are.

He finally submitted that the orders sought to be revised being orders of adjournment are interlocutory orders. The orders do not determine the finality of the charge thus this court lacks jurisdiction to exercise revisionary jurisdiction over such orders. He thus urged the application be struck out.

Submitting against preliminary objection, on the first time of objection Mr. Othuman Kalulu Learned Counsel was of the argument that, the provision cited in the application was just wrongly cited, but exists. He said Section 372 of Criminal Procedure Act has not been repealed by any law but it has been amended. That when Section has been amended does not mean that it does not exists.

On the second limits of objection it was Mr. Kalulu's submission that though Section 372(2) of the Act prohibits the High Court from exercising revisional powers in interlocutory orders, but his contention was that the court has inherent powers to revise the same provided that the orders are illegal and improper.

It was his further contention that though the orders sought to be revised are procedural ones of adjournment, but being endless orders have effect on the charge against the applicants as the orders hinder preliminary hearing to be conducted.

Finally, Mr. Kalulu was of argument that no matter the law is, the inherent jurisdiction of this court cannot ousted to the courts subordinate to. He thus prayed the objection raised be overruled.

In rejoining, Mr. Kadushi Learned Principle State Attorney reiterated the submission in chief. He added that Act No. 25 of 2002 prohibits the appeal or revision on the interlocutory orders. It is only the DPP who can

appeal against such orders. He said the illegality or impropriety can be revised when the order determines the finality of the charge.

On the question of inherent powers of the court, it was his submission that the court has such interest powers where there is no (specific) law which governs such an aspect. But in the case at hand the law is very clear that interlocutory orders which do not determine the charge to the finality are not revisable. In such a situation the court cannot invoke inherent powers but refer to what the law provides.

He added that whether the adjournment orders are endless or not such orders cannot determine the effect of the criminal charge. What amount to finality determination of a criminal charge in either conviction or acquittal.

At the end, he submitted that the jurisdiction of the court is statutory not presumed. The fact that the law prohibits the court to exercise revisionary powers on interlocutory orders, thus the application before hand is incompetent it be struck out.

Having gone through submission of both counsel the learned Principal State Attorneys with the authorities cited in the light of the preliminary objection raised.

The point of determination is whether this application is ternable in the eyes of the law.

To start with, Section 372 (1) & 373 of the Criminal Procedure Act (Cap 20 R.E. 2002) empowers this court to call for and examine the record of any proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality, or propriety of any finding, sentence or order passed recorded or passed, as to the regularity of any proceedings of any subordinate court. The above provisions gave the court vast power of making revision. But with the amendment of Section 372 by **Written Laws (Miscellaneous Amendment) Act No. 25 of 2002**, the said amendment added subsection 2 to Section 372 which provided:

> *(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 the subordinate court unless such decision or order, has the effect of finally determining the Criminal charge."*

The question here is whether the order sought to be revised finally determines the Criminal charge. The answer is definitely no. First the subordinate court in this case being a committal court has no jurisdiction to make such an order. As committal court, it cannot make an order as to whether the applicants have the case to answer nor the orders issued cannot bar preliminary hearing to be conducted, by the court with competent jurisdiction after committal order has been issued.

I have gone through the proceedings, I have not found any illegality or impropriety as far as the adjournment orders are concerned. The

committal court has jurisdiction to conduct preliminary inquiry on the case. The court has not acted with any illegality or material irregularity. The fact that the committal court exercises the jurisdiction vested by the law with no illegality material irregularity, I find there is no ground whatsoever for this court to exercise revisional jurisdiction as provided Under Section 373(1)b of the Criminal Procedure Act (Cap 20 R.E. 2002). The trial court has given a heed to the legal requirement of mentioning the case after every 15 days as required by law refer Section 225 (2) of CPA which applies for trials before the subordinate court.

It's role is to conduct preliminary inquiry and then commit the applicants to the High Court for trial.

Being said and done, I am of the firm view that the application is not tenable in law. The application before me is incompetent so to say. The only remedy is to struck it out.

I accordingly struck out the application.

It is so ordered.

THE HIGH COURT OF TANZANIA

D. B. NDUNGURU
JUDGE
13/10/2020

Date: 13/10/2020

Coram: D. B. Ndunguru, J

1st Applicant:
2nd Applicant:
3rd Applicant:
4th Applicant: } Present
5th Applicant:
6th Applicant:

For the Applicants: Mr. Kalulu – Advocte (on Video Conference)

For the Republic: Mr. Baraka – State Attorney

B/C: M. Mihayo

Mr. Baraka – State Attorney:

The matter is for ruling, we are ready.

Mr. Kalulu Othman – Advocate:

We are ready.

Court: Ruling delivered in the presence of Mr. Baraka Mgaya State Attorney and Mr. Kalulu Othman advocate for the applicants and the applicants.

THE HIGH COURT OF TANZANIA

D. B. NDUNGURU
JUDGE
13/10/2020

Right of Appeal explained.