

IN THE UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 167 OF 2019

*(Arising from Economic Crime Case No. 7 of 2017, in the
Resident Magistrate's Court of Dar es Salaam at Kisutu)*

ABDALLAH MOHAMED NGALANGA-----1ST APPLICANT

YAHAYA MOHAMED LUKUMBI-----2ND APPLICANT

VERSUS

THE REPUBLIC-----RESPONDENT

RULING

Date of Last Order: 20/11/2019

Date of Ruling: 19/12/2019

S. M. KULITA, J

This is a Preliminary Objection on point of law. The Applicants namely Abdallah Mohamed Ngalanga and Yahaya Mohmed Lukumbi who are the 1st and 2nd Applicants respectively filed this application for bail before

this court pending the preliminary inquiry and trial of the Economic Crime Case No. 7 of 2017, Resident Magistrate Court of Dar es Salaam at Kisutu.

In reply to the said application the respondent's counsel filed a notice of preliminary objection that this court is functus officio to determine the application.

In her oral submission the Respondent's counsel for the Republic Ms. Tully Helela (State Attorney) stated that the matter at hand is res judicata as the same had ever been heard and determined by another court which has the same jurisdiction to this one.

She mentioned the said court being the High Court Economic and Corruption Division whereby the same was registered as Miscellaneous Economic Cause No. 12 of 2017. Ms. Tully Helela submitted that in the said application for bail the Director of Public Prosecution (DPP) filed a certificate to object bail against the two applicants and the same sustained. she prays for the application to be dismissed.

In his reply to the said preliminary objection the 1st Appellant, Abdallah Mohamed Ngalanga stated that they actually filed the application for bail at the High Court, Economic and Corruption Division but it was a wrong court

for entertaining the bail application for economic cases. He said that it had no such powers. He said that this one is a proper court for bail purpose in the economic cases like this one. He prays for the preliminary objection to be overruled.

The 2nd Respondent, Yahaya Mohamed Lukumbi submitted that they actually sought for bail at the Economic and Corruption Division of the High Court but the DPP objected bail for the reason that they could interfere investigation and their life could be in danger, as well the public interest would be prejudiced. The 2nd Applicant said that so long as they have been in remand custody for a long time there is no more danger that can face them. As for the public interest the Applicant stated that the court may impose the conditions that will not effect to the said public interests. He prayed for the preliminary objection to be overruled.

In the rejoinder the State Attorney submitted that this court cannot entertain the application which has already been determined by another court which has concurrent jurisdiction. She said that it is res judicata. She said that the solution was to appeal at the Court of Appeal against that decision and not to lodge another application.

Upon going through the submissions of both parties I have noticed that this matter had ever been determined at the High Court Economic and Corruption Division in the Misc. Economic Cause No. 12 of 2017 whereby the application for bail was dismissed on the 4th day of May, 2017 for the reason that the DPP had filed a certificate to object bail against the Applicants who are the same to this matter. The said certificate was found valid hence the application for bail was denied.

The said certificate remains in effect until the proceedings concerned are concluded or where the DPP withdraws the certificate.

In upshot this application for bail is improper before this court for being res judicata. This court is functions officio to determine the same hence dismissed.




S. M. Kulita

Judge

19/12/2019