IN THE HIGH COURT OF TANZANIA

THE CORRUPTION AND ECONOMIC CRIMES DIVISION

AT DAR ES SALAAM REGISTRY

MISC. ECONOMIC CAUSE NO. 13 OF 2017

(Originating from Economic case No.17/2017 of Kisutu Resident Magistrate's court)

1. FAITH GODFREY MUZO
2. HASSAN ABDALLAH MTWANGIZI } **APPLICANTS**

VERSUS

THE REPUBLIC ..... RESPONDENT

Date of Last Order: - 29/05/2017

Date of Ruling: - 05/6/2017

R U L I N G

MATOGOLO, J.

The applicants Faith Godfrey Muzo and Hassan Abdallah Mtwangizi, along with one Dafroza Melekior Rwegasila were jointly charged before the court of Resident Magistrate of Dar es Salaam at Kisutu with one count of unlawful possession of Government Trophies c/s 86(1) and (2) © and part 1 of the first schedule of the Wildlife conservation Act, No.5 of 2009 read together with paragraph 14 of the 1st schedule to, and section 57(1) of the Economic and organized crime control Act, Cap 200 RE as amended.

It is alleged that on 11th April 2017 at Kimara Temboni area within ubungo District Dar es Salaam Region they were found in unlawful possession of Government Trophies that is two pieces of elephant tusks

valued at USD 15,000 equivalent to Tshs.34,275,000 the property of the United Republic of Tanzania without a permit from the Director of wildlife.

The two applicants have filed this application applying for bail. The application is by chamber summons made under S.29(4)(d) and S.36(1) of Cap.200 as amended. The same is supported by the affidavits of Emmanuel Augustino who is the applicants advocate.

The respondent was served with the chamber summons and the affidavit supporting the application. He filed counter-affidavit which was taken by one Florentina Leonce Sumawe – State Attorney.

But the respondent also filed notice of preliminary objection on point of law and presented a certificate by the Director of Public prosecution certifying that if the applicants will be granted bail then the safety and interest of the Republic will be prejudiced. This certificate was presented in court on 29/5/2017 the date which was fixed for hearing of the preliminary objection.

Taking into account the nature of the certificate and its effect, when is filed Mr. Taslima learned advocate for the applicants saw it proper to argue on the certificate so as to see its validity because once is found properly filed, there is nothing will take place. Even the application itself cannot be heard. Their argument is that the certificate in question is not proper before this court, it purports to be made under S.36(2) of Cap.200 RE 2002 which is an old law no longer existing after the amendment of 2016. The DPP did not indicate in his certificate the amendment made in 2016.

He said the respondent cited the law as the Economic and organized crime control Act. The same should be read as R.E.2016 rather than 2002.

On his part Mr. Elia Athanas learned State Attorney, first he wanted to know as to what should proceed, hearing of the Preliminary Objection they have raised or the discussion on the certificate filed by the DPP So he sought guidance by this court. However as the effect of the DPP certificate is to put at stake any proceeding relating to grant of bail, I gave guidance that the issue of certificate should be resolved first before we embark on hearing the Preliminary objection or the application itself. As the PO relates to the application itself. After such guidance, Mr. Elia Athanas State Attorney made a reply to what the learned advocates for the applicants have submitted. He said the chamber summons filed by the applicants indicates that it was brought under S.29(4)(d) and S.36(7) of Cap.200 R.E.2002 as amended. He said the amendment Act which amended cap.200, the name of the Act was not amended, the same remains to be the Economic and organized crime control Act. The changes made in the 2016 amendment are normal amendments and were in respect of some sections in the law. The amendment did not change the name of the law. The named amendment is what created the corruption and Economic Division of the High Court.

But in that amendment he said there is nowhere the name of the law (Act) was changed. He said he does not see the basis of the argument raised by the learned advocates for the applicants as even the advocates themselves have cited the law in their chamber summons the way it reads.

In rejoinder the applicants advocates insisted that the amendment made in 2016 must be reflected when citing Cap.200 RE 2002 and the same must be reflected in the DPP certificate. Mr Emmanuel Augustino learned advocate on his part added that failure by the DPP to indicate the

amendment of 2016, renders the certificate fatally defective. That although the learned State Attorney has submitted that even themselves have referred the law the way he cited it, but in their chamber summons they added the word "as amended" But in the certificate in question, those words were not indicated. So he said, they view that certificate as brought under a dead law. He prayed therefore that the certificate should not be considered and that the court should proceed to hear the preliminary objection.

Mr. Taslima learned counsel on his part concluded by submitting that it is a prerogative of the court to admit an accused person to bail and more so when under S.36(1) of the ECOCCA Cap.200 it is provided that the court may on its own motion admit the accused person to bail. Therefore if the DPP come to certify by a single sentence that the safety and interest of the Republic will be prejudiced without anything else indicating the basis for the DPP saying so, it will tantamount to defeat the cardinal rule contained in the constitution of the United Republic of Tanzania which provides for innocence of the accused until when he will be proved guilty.

To start with, if I properly understood the argument raised by the advocates for the applicants, they are faulting the certificate filed by the DPP, for his failure to indicate that the Economic and Organized Crime Control Act, Cap.200 RE 2002 was amended.

However both learned advocates did not mention the specific sections of the law which were amended. Perhaps it is important at this juncture to know what does amend means. The word "amend" is defined in the interpretation of Laws Act, Cap.1 RE.2002 to mean, replace,

substitute in whole or in part, add to or vary, and the doing of any two or more of such things simultaneously or by the same written law.

I have gone through the amendment Act No.3 of 2016 referred by the learned advocates for the applicants. But I did not see any amendment to S.36(2) of the Economic Organized Crime Control Act. There is therefore no any replacement, substitution in whole or in part, any addition or variation of the said section which means that the section was not amended and is still intact before and after the amendment of 2016.

The question therefore is whether omitting to indicate the word amendment or as amended is fatal or renders the document fatally defective. But on top of that, the learned counsel for the applicants suggested that section 36(2) of the Economic and Organized Crime Control Act should be cited as The Economic and Organised Crimes Control Act, Cap.200 RE. 2016.

But I must hastily say that so far there is nothing like Revised Edition 2016. The last authorized, and published revised edition of the laws of Tanzania is of 2002. The revised edition can only be published after the Attorney General has published in the Government Notice such intention, on the powers conferred upon him under S.4(2) and (3) of the Laws Revision Act No.7 of 1994. So it is not every amendment which is made to the law then that law should be referred as Revised edition of that year of amendment. It is until when the Attorney General acting on the powers conferred to him under the above cited law, publish in the Gazzete changes of citation of the relevant law.

The Attorney General has not exercised such powers conferred to him to declare changes in the citation of the Economic and Organized

Crime Control Act Cap.200 RE 2002 after the amendment Act No.3 of 2016 for it to be cited Economic and Organised Crime Control Act, RE 2016. It is therefore not fatal for a party for not indicating the word RE 2016 for an Act which was amended in 2016.

I have pointed out here in above that the Act No.3 of 2016 did not amend S.36(2). That is the amendment of 2016 did not touch section 36(2). The question to be resolved is whether, despite the fact that the section was not amended by Act No.3/2016 failure to indicate the Word "as amended" renders the document defective. The learned advocates for the applicants are suggesting affirmative answer. But I am of the different view, if the section was not affected by the amendment then even if the words "as amended" is not indicate is not fatal. These words would be relevant if the section would have been amended for the meaning of being changed or altered. But if the section was not touched in the amendment, then failure to cite the amendment has no effect to the validity of S.36(2) so it cannot be correctly said that as the DPP did not cite the law as Economic and Organized Crimes Control Act as amended then the certificate is invalid and of no effect and thus be disregarded and the court has to proceed with hearing of the application filed by the applicants. This argument therefore fails. Normally an amendment to the Act does not change the name of the Act unless the law is repealed and replaced by another law.

But in the case at hand, Cap.200 was not repealed and replaced. Even the title of the law was not changed. So it is not wrong and therefore not fatal for the DPP to refer the law as it was before the amendment of 2016. Mr. Tashima learned counsel on his part in his concluding remarks

in their rejoinder stated that the court has powers to grant bail to the accused person. It can do so even without being moved by a party, but can do so in its own motion. That if the DPP come to certify by a single sentence that the safety and interest of the Republic will be prejudiced without anything else indicating the basis for the DPP saying so it will tantamount to defeat the cardinal rule contained in the constitution which provide for innocence of the accused until when he will be proved guilty.

Mr. Tashima learned counsel appeared to suggest that in filing the certificate, the DPP at least is supposed to give reasons and basis for him to certify that the safety and interest of the Republic will be prejudiced. S.36(2) ECOCCA under which the certificate in question was made reads as follows:

> *"36(2) Not withstanding anything in this section contained no person shall be admitted to bail pending trial or appeal, if the Director of Public Prosecution certifies that it is likely that the safety or interests of the Republic would thereby be prejudiced".*

Subsection 2 of S.36 quoted above has no any word to the effect that the DPP has to give reasons or basis for him to issue the certificate. The basis is what is provided in the section itself, that is it is likely that the safety or interests of the Republic would thereby be prejudiced. The DPP is therefore not required to give reasons apart from certifying that the safety and interests of the Republic is likely to be prejudiced and there is no any Law requiring him to give reasons. That was also clearly explained by the Court of Appeal in the case of **DPP vs. Li Ling Ling** criminal Appeal No.508/2015

As to the argument that the certificate filed by the DPP tends to defeat the cardinal rule contained in the constitution which provides for presumption of innocence of the accused until when he will be proved guilty. I agree with Mr. Taslima learned counsel that the constitution of the URT under article 13(6)(b) provides for presumption of innocence. However it should also be born in mind that the same constitution recognizes other laws, even those which appear to be derogative in nature which restrict individual rights, for example those laws which completely deny bail to the accused on certain offences. But such laws are made with a purpose that is to protect the interest of the entire society. Such laws cannot be taken as contravening the constitution. Example article 30 (2) of the URT constitution which provides that the individual rights and freedom cannot render other enacted laws aimed at protecting the rights of the entire society and keeping peace and order unconstitutional. Although Mr. Taslima argued that powers of the court to grant bail cannot be removed by the certificate filed by the DPP, but the position of the law now as far as certificate by the DPP is concerned is as provided in the case of **Li Ling Ling** (supra) in which it was held once the DPP has filed a certificate objecting grant of bail, and the court is satisfied that the said certificate has met the validity test as laid down in the case of **DPP Vs. Ally Nur Dirie & Another (1988) TLR 252 CA,** then the court cannot grant bail.

The conditions for validity of the certificate are as follows;

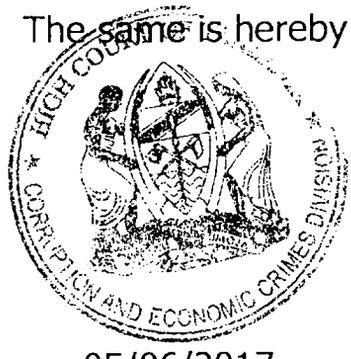
(i) The DPP must certify in writing

(ii) The certificate must be to the effect that the safety or interests of the Republic are likely to be prejudiced by granting bail in the case, and

(iii) The certificate must relate to a criminal case either pending trial or pending appeal.

The certificate in question has met the three conditions, it is in writing has stated that the safety or interests of the Republic are likely to be prejudiced and it relates to the criminal case pending in the court of Resident Magistrate of DSM at Kisutu. The decision of the Court of Appeal is instructive to court, as this court has found the certificate to be valid one then this court cannot proceed to hear the application for bail.

The same is hereby dismissed.



F.N. MATOGOLO
JUDGE
05/6/2017

Date: 05/06/2017

Coram: Hon. F.N. Matogolo, Judge

For Applicants: Mr Taslima advocate

1st applicant: Present

2nd Applicant: Present

Respondent: M/s Sumawe- State Attorney

C/Clerk: Mr. N.C. Malela- RMA

Ms. Sumawe – State Attorney

My Lord I appear for the Republic.

Mr. Taslima advocate

My Lord I appear for the applicants. The matter is for ruling today. We are ready.

Court:

Ruling delivered today the 5th day of June, 2016 in the presence of the applicants and in the presence of Mr. Taslima advocate for the Applicant and Florentina Sumawe –State Attorney.

F.N. MATOGOLO
JUDGE
05/6/2017