

**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF SHINYANGA**  
**AT SHINYANGA**

**CONSOLIDATED MISC. CRIMINAL APPLICATIONS NO. 23 and**  
**22 OF 2021**

**WILLIUM JAMES @ KASHATO.....1<sup>st</sup> APPLICANT**

**SAID JUMANNE @MASHOKOLO.....2<sup>nd</sup> APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

[Arising from Economic Crime Case No. 2/2021 from the District Court of  
Bariadi at Bariadi.]

**RULING**

26<sup>th</sup> & 27<sup>th</sup> August, 2021.

**KULITA, J.:**

This is a consolidated application for bail pending trial of the Applicants in Economic Case No. 02 of 2021 in the District Court of Bariadi. According to the holding charge, the Applicants are charged with fifty-nine counts on Obtaining Money by False Pretense contrary to the provisions of section 301 and 302 of the Penal Code, Cap 16 RE 2012. With regard to the 60<sup>th</sup> count, the Applicants are charged with Money

Launders contrary to the provisions of section 12(d) and 13(a) of the Anti Money Laundering Act, No. 12 of 2006.

In all the fifty-nine counts, it is alleged that, on diverse dates between 25/06/2019 and 5/11/2019, at various places within the District of Mpanda in Katavi Region and Maswa District in Simiyu Region jointly and together, the Applicants together with other persons not in court, by false pretense and with intent to defraud did obtain Tshs. 29,275,500/= of Laubenas Bwire under the pretext that, they would help him to get Pasi ya Mjerumani. It was alleged further in the 60<sup>th</sup> count that, the Applicants did obtain that amount of money while knowing the same is a proceed of a predicate offence of Obtaining Money by False Pretense.

This application is brought under the provisions of section 29(4)(d) of the Economic and Organized Crime Control Act and section 148(3) and (5)(a)(iii) of the Criminal Procedure Act Cap 20 RE 2012. It is supported by the affidavit of the Applicants, sworn on 27<sup>th</sup> of July, 2021. On 26<sup>th</sup> of August, 2021 this application came for hearing. The Applicants appeared in person whereas Mr. Nestory Mwenda and Venance Mkonongo, learned State Attorneys appeared for the Respondent, Republic. Before commencement of hearing, as the Applicants' Applications in Misc. Criminal Applications No. 22 and 23 all are of the same nature and

originate from the same Economic Case No. 02/2021, this Court made an order for Consolidation of the same into Criminal Application No. 23/2021.

Submitting in support of the application, the 1<sup>st</sup> Applicant in a nutshell stated that, he has been charged at the Bariadi District Court with Money Laundering offence. He formed a considered views that, that offence is not bailable at the District Court. On that note, he asserted that he has come to this court as bail is his right as per article 13(6)(b) of the Constitution of the United Republic of Tanzania, 1977. Lastly the 1<sup>st</sup> Applicant submitted that, he has reliable sureties and that he will abide with bail conditions. The 2<sup>nd</sup> Applicant subscribed fully to what the 1<sup>st</sup> Applicant has submitted.

In response, Mr. Mwenda resisted the Application on the ground that, the applicants' holding charge shows that, they are charged with offence of Money Laundering. On that he said, offence of money Laundering is not bailable as per section 148(5)(a)(v) of the Criminal Procedure Act, RE 2019. He thus urged this court should not admit the Applicants into bail. This is the end of both parties' submissions.

I have taken into consideration both parties' submissions together with the available records. The crucial issue for determination is, whether this Court has jurisdiction to grant the Applicants' application at hand.



I understand that, article 13(6)(b) of the Constitution is to the effect that no person should be treated as guilty in criminal charge before that one is so proved. I equally agree with Mr. Mwenda's submission that section 148(5)(a)(v) of the Criminal Procedure Act, RE 2019 prohibits courts to grant bail to the one charged with the offence of money laundering.

The question is, which side should I take between the two above? Article 30 of the Constitution of the United Republic of Tanzania, 1977 has an answer, the same provides as hereunder; -

***30.-(1) The human rights and freedoms, the principles of which are set out in this Constitution, shall not be exercised by a person in a manner that causes interference with or curtailment of the rights and freedoms of other persons or of the public interest.***

***(2) It is hereby declared that the provisions contained in this Part of this Constitution which set out the principles of rights, freedom and duties, does not render unlawful any existing law or prohibit the enactment of any law or the doing of any lawful act in accordance with such law for the purposes of-***

*(a) ensuring that the rights and freedoms of other people or of the interests of the public are not prejudiced by the wrongful exercise of the freedoms and rights of individuals;*

*(b) ensuring the defence, public safety, public peace, public morality, public health, rural and urban development planning, the exploitation and utilization of minerals or the increase and development of property of any other interests for the purposes of enhancing the public benefit;*

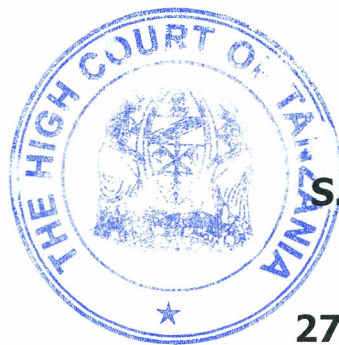
*(c) ensuring the execution of a judgment or order of a court given or made in any civil or criminal matter;*

*(d) protecting the reputation, rights and freedoms of others or the privacy of persons involved in any court proceedings, prohibiting the disclosure of confidential information, or safeguarding the dignity, authority and independence of the courts;*

*(e) imposing restrictions, supervising and controlling the formation, management and activities of private societies and organizations in the country; or*

*(f) enabling any other thing to be done which promotes, or preserves the national interest in general.*

The quoted article above has said it all. With this, I am settled that, article 13(6)(b) of the Constitution does not apply automatically and does not as well make devoid the legislation in section 148(5)(a)(v) of the Criminal Procedure Act. On that note, I find that, this court has no jurisdiction to grant the applicants bail for the reason that they have been charged with an offence in Ant-Money Laundering. I thus proceed to dismiss the application. It is so held and ordered accordingly.

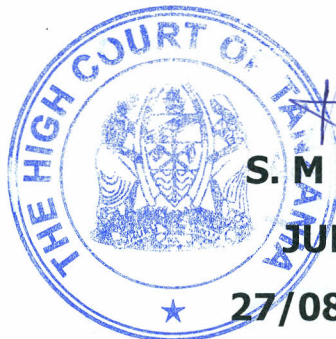


*HL*  
**S.M. Kulita**

**JUDGE**

**27/08/2021**

**DATED at SHINYANGA** this 27<sup>th</sup> day of August, 2021.



*HL*  
**S. M Kulita**

**JUDGE**

**27/08/2021**