IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: MWARIJA, J.A., KOROSSO, J.A. And KIHWELO, J.A.)

CRIMINAL APPEAL NO. 11 OF 2020

JOYCE JOHN MUSHI ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania, at Dar es Salaam)

(Mgonya, J.)

dated 2nd day of December, 2019
in
HC. Misc. Economic Cause No. 158 OF 2019

.....

RULING OF THE COURT

26th October & 22nd November, 2021

MWARIJA, J.A.:

This appeal arises from the decision of the High Court of Tanzania at Dar es Salaam (Mgonya, J.) in Misc. Economic Cause No. 158 of 2019. In that case, the appellant, Joyce John Mushi had applied for bail pending trial in Economic Case No. 82 of 2019 filed in Resident Magistrate's Court of Dar es Salaam at Kisutu. The appellant was charged with eight counts under the Penal Code [Cap. 16 R. E. 2002 now R. E. 2019] and two counts under the Economic and Organized Crime Control Act [Cap. 200 R. E. 2002, now R.E. 2019] (the EOCCA). The economic offence included money laundering contrary to ss 12(d) and 13(a) of the Anti-money Laundering Act, No. 12 of

2006 read together with paragraph 22 of the First Schedule to, and ss 57(1) and 60(2) of the EOCCA.

The application for bail which was supported by an affidavit sworn by Nehemiah Geofrey Nkoko, learned advocate, was made before the High Court under s. 29(4)(d) of the EOCCA. The respondent Republic resisted the application through a counter affidavit sworn by Cecilia Sebastian Shelly, learned Senior State Attorney. The argument by the counsel for the appellant at the trial was that, since the application for bail was preferred under s. 29 (4) (d) of the EOCCA and because under that Act, save for offences involving drugs, bail for other offences including the offence of money laundering is not prohibited, the appellant was entitled to be released on bail. On the other hand, the respondent contended that, because s. 148 (5)(a)(v) of the Criminal Procedure Act [Cap.20 R. E. 2002, now R.E. 2019] (the CPA) prohibits grant of bail to a person charged with money laundering offence, that section applied to the appellant notwithstanding the fact that the application for bail was not made under the CPA.

Having heard the application, the learned High Court Judge dismissed it on account that the offence of money laundering which the appellant

stood charged in the 10th count is, by virtue of the provisions of s. 148(5)(a)(v) of the CPA, not bailable.

The appellant was aggrieved by the decision of the High Court hence this appeal which is predicated on one ground as follows:

> *"THAT, the learned trial judge erred in law and fact by dismissing the appellant's application for bail holding that the application cannot be considered under the Economic and Organized Crime Control Act, [Cap. 200 R.E. 2002] as amended by Act No. 3 of 2016."*

When the appeal was called on for hearing on 26/10/2021, the appellant, who was present in Court, was represented by Mr. Nehemiah Nkoko, learned counsel while the respondent Republic was represented by Mr. Nassoro Katuga, assisted by Ms. Kasana Maziku, learned Senior State Attorneys.

Having made his submission in support of the appeal, Mr. Nkoko informed us that during the pendency of the appeal, the 10th count of money laundering which was the subject of the application for bail in the High Court, was withdrawn following a *nolle prosequi* entered by the Director of Public Prosecutions (the DPP) under s. 91 of the CPA. For that

reason, he pointed out, the appeal has been overtaken by events. He however, urged us to proceed to determine it regardless of the fact that the purpose of the appellant's prayer has been achieved through the withdrawal by the DPP, of the 10th count. Submitting in reply to the arguments made by the counsel for the appellant, Mr. Katuga opposed the contention that the offence of money laundering charged in the 10th count is bailable. He argued, first, that the EOCCA under which the application was made, does not prohibit grant of bail and secondly that although s. 148(5)(a)(v) of the CPA prohibits bail, the application was not made under that Act. He conceded however, that the 10th count was withdrawn after the DPP had entered a *nolle presequi*.

Having been informed that the offence charged in the 10th count has been withdrawn, we asked ourselves whether it would be necessary to determine the appeal. We think, for one thing, the decision in the appeal would have the effect of setting a precedent as regards an application for bail made under the particular facts and circumstance of the case at hand, otherwise, it is obvious that, even if the decision is made in favour of the appellant, it will no longer serve the intended purpose because the withdrawal of the offence charged has enabled her to be granted bail. In her memorandum of appeal, the appellant prays for the following:

"...the appellant pray(s) the Honourable Court to allow the appeal and grant bail to the appellant."

We think that, since that prayer has been overtaken by events, it is not necessary to determine the appeal. The interpretation as regards application of s 148 (5) (a) (v) of the CPA where bail application is made under an Act which does not have a provision prohibiting grant of bail, may be given in a fit case when an opportunity to do so arises. That said, we hereby strike out the appeal for having been overtaken by events.

DATED at **DAR ES SALAAM** this 15th day of November, 2021.

A. G. MWARIJA
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

P. F. KIHWELO
JUSTICE OF APPEAL

The Ruling delivered this 22nd day of November, 2021 in the presence of Mr. Nehemia Nkoko learned advocate for the appellant and Mr. Ladislaus Komanya, learned Senior State Attorney for the respondent/Republic is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

K. D. MHINA
REGISTRAR
COURT OF APPEAL