

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: MUGASHA, J.A., NDIKA, J.A., And LEVIRA, J.A.)

CRIMINAL APPEAL NO. 226 OF 2020

DIRECTOR OF PUBLIC PROSECUTIONS.....APPELLANT

VERSUS

- 1. FADHILI ATHUMANI JUMA**
- 2. CHACHA WILLIAM MASESE**
- 3. CHOJI BATISTA MTANDI**
- 4. SAMO ALLY ISACK**
- 5. MWINYI RAMADHANI MAGWIRA**
- 6. IDDRISSAH TUNGUHOLE**
- 7. MASTER OMARY**
- 8. ISMAIL AMBINDWILE**
- 9. FRANCIS PETER NGOZINGOZI**
- 10. JOSEPH WILSON BULINDA**
- 11. BARAKA PHAUSTINE KAUMA**

.....RESPONDENTS

**(Appeal from the decision of the High Court of Tanzania
at Dodoma)**

(Masaju, J.)

dated the 3rd day of April, 2020

in

Misc. Criminal Application No. 4 of 2020

RULING OF THE COURT

17th & 18th June, 2020

MUGASHA, J.A.:

In the Resident Magistrate's Court of Dodoma Region, the respondents were charged with various offences laid under the Economic and Organised Crimes Control Act [CAP 200 RE.2002],

(the EOCC Act) the National Security Act [CAP 47 RE.2002] and the East African Community Vehicle Load Control Act, Act No.1 of 2016.

As it can be gleaned from the charge sheet, the respondents are alleged to have committed the said offences in various places along Kasumulu-Mbeya-Makambako-Iringa-Dodoma Highway. Since the alleged damage caused was valued at TZS. 14,000,000,000, the respondents herein could not be admitted to bail before the Resident Magistrate's Court and as such, except for the 7th respondent, the rest under certificate of urgency lodged a joint application for bail before the High Court vide Misc. Criminal Application No. 4 of 2020. Having heard the submissions of the parties and thereafter inquiring from the respondents on the respective places of arrest, the learned High Court Judge relied on provisions of section 29 (1) of the EOCC Act and concluded as follows:

"...the Resident Magistrate's Court of Dodoma Region in which the Applicants have been indicted, lacks local jurisdiction to deal with the applicants (Respondents herein) according to law save for the 4th and 5th applicants whose arrests were made

within Dodoma City. It follows therefore that this Court as well lacks power to hear and grant this bail application save for the 4th and 5th applicants because other Applicants' arrests were not made within the local jurisdiction of the Court namely, Dodoma Registry, of the High Court of the United Republic of Tanzania though the offence is bailable under sections 29 (4) (d) and 36 (1) of the Economic and Organised Crimes Control Act, [CAP 200]. For that reason, the Court hereby refrains from considering submissions made by the parties hereto."

In that regard, in order to cure what he considered to be an illegality, the learned High Court Judge having invoked revisional powers under section 372 of the Criminal Procedure Act, [CAP 20 RE.2002], nullified and quashed the proceedings and orders made by the Resident Magistrate's Court with the following order:

"The respondent Republic shall consider section 29 (1) of the Economic and Organised Crimes Control Act, [CAP 200], and deal with the applicants accordingly in respect of their prosecutions, if any in the

District Courts or Resident Magistrates' Courts within whose local limits the Applicants' arrests were made as soon as practicable."

The learned High Court Judge then proceeded to strike out the application for bail and the Economic Case before the subordinate court which was pending for committal.

Unamused with the decision, the Director of Public Prosecutions (the DPP) has lodged an appeal before the Court. However, for reasons to be apparent in due course, we shall not reproduce the grounds of appeal.

At the hearing vide a virtual link to Isanga Central Prison where the respondents are remanded, the DPP had the services of Mr. Tumaini Kweka, learned Principal State Attorney, Ms. Lina Magoma, learned Senior State Attorney and Mr. Harry Mbogoro, learned State Attorney. The respondents were represented by Mr. Deus Nyabiri, learned counsel.

In view of what transpired before the High Court, we invited parties to address us on the propriety or otherwise of the Ruling of the learned High Court Judge.

Mr. Kweka submitted that, following the inquiry from the respondents as to where they were arrested, the appellant herein was not given opportunity to make a response. He added that, subsequently, the assertions by the respondents formed the basis of the Ruling in which apart from the learned High Court Judge concluding that he lacked jurisdiction, went ahead to strike out the bail application and the pending Economic Case before the subordinate court. He argued this to be a condemnation of the appellant without a hearing which is a violation of a fundamental right and urged the Court to nullify the Ruling of the High Court and direct that the appellant be heard on the matter.

On the other hand, after a brief dialogue with the Court, Mr. Nyabiri conceded to the submission put forth by Mr. Kweka and urged the Court to invoke revisional powers under section 4 (2) of the Appellate Jurisdiction Act [CAP 141 RE.2002] (the AJA) to nullify the Ruling of the High Court and order the determination of the bail application.

Having considered the submissions of the parties, before determining the propriety or otherwise of the Ruling of the High Court we have deemed it crucial to revisit what transpired before the High Court. After the learned High Court Judge heard the submissions of the parties for and against the application for bail, at page 53 to 58 the following ensued:

"COURT

The Applicants' the whereabouts of weighbridges they have been operating and the places where they were arrested, is inquired by the Court. The Applicants hereby replies thus: -

Mr. Fadhili Athuman Juma (1st Applicant):

My Lord, I am a weighbridge Operator at Makambako. I was arrested at Makambako, within Njombe District, Njombe Region on the 1st day of November, 2019.

Sgd.
GEORGE M. MASAJU
JUDGE
27/3/2020

Mr. Chacha William Masesa (2nd Applicant):

My Lord, I am a weighbridge operator at Wembe Iringa within Iringa District. I was arrested on 30th day of October, 2019 at Iringa Municipality.

**Sgd.
GEORGE M. MASAJU
JUDGE
27/3/2020**

Mr. Choji Batista Mtandi (3rd Applicant):

My Lord, I am a weighbridge operator at Wembe weighbridge I was arrested on the 31/10/2019 at Wembe Weighbridge, Iringa District.

**Sgd.
GEORGE M. MASAJU
JUDGE
27/3/2020**

Mr. Samo Ally Isack (4th Applicant):

My Lord, I am a Driver based here at Dodoma. I was arrested here at Dodoma on the 31/10/2020

Sgd.
GEORGE M. MASAJU
JUDGE
27/3/2020

Mr. Mwinyi Ramadhani Magwira (the 5th Applicant):

I am a Driver based in Dar es Salaam. I was arrested on the 31/10/2020 here at Dodoma City.

Sgd.
GEORGE M. MASAJU
JUDGE
27/3/2020

Mr. Iddrissah Tunguhole (6th Applicant):

My Lord, I am the in-charge of Uyole Weighbridge, within Mbeya urban District. I was arrested on the 1/11/2019 at Uyole weighbridge.

Sgd.
GEORGE M. MASAJU

JUDGE
27/3/2020

Mr. Master Omary (the 7th Applicant):

My Lord, I am a motor vehicle mechanic based at Uyole Mbeya, within Mbeya Urban District. I was arrested at Uyole on the 5/11/2019.

Sgd.
GEORGE M. MASAJU
JUDGE
27/3/2020

Mr. Ismail Ambindwile (the 8th Applicant):

My Lord, I am a weighbridge operator at Uyole Weighbridge. I was arrested on the 5/11/2019 within Mbeya Municipality.

Sgd.
GEORGE M. MASAJU
JUDGE
27/3/2020

Mr. Francis Peter Ngozingozi (the 9th Applicant):

My Lord, I am a shift in-charge, Makambako Weighbridge, within Njombe District. I was arrested on the 6/11/2019 at Makambako Township.

Sgd.
GEORGE M. MASAJU
JUDGE
27/3/2020

Mr. Joseph Wilson Bulinda (the 10th Applicant);

My Lord, I am a cashier at Uyole weighbride Mbeya Municipality. I was arrested on the 5/11/2019 there within Mbeya Municipality.

Sgd.
GEORGE M. MASAJU
JUDGE
27/3/2020

Mr. Baraka Phaustine Karuma (the 11th Applicant);

My Lord, I am an Accounts Assistant at Makambako Weighbridge, Njombe District. I was arrested at Makambako weighbridge on the 6th day of November, 2020.

Sgd.
GEORGE M. MASAJU
JUDGE
27/3/2020

COURTS ORDERS

- 1. The Ruling shall be delivered on the 8th day of April, 20202.*
- 2. The parties shall not default appearance in Court.*

Sgd.
GEORGE M. MASAJU
JUDGE
27/3/2020."

That apart, while the learned High Court Judge did not invite the Republic to make any responses on the assertions made by the respondents pursuant to the Court's inquiry, however, at page 66 of the record he made a finding to the effect that:

"This information by the Applicants on where their arrests were made was not controverted by the Respondent Republic."

This is not supported by the record and it is glaring that, the learned High Court Judge acted solely on the assertions made by the respondents to strike out the application for bail and the pending Economic case on ground that, both the High Court and the subordinate court lacked requisite jurisdiction on the matter. Besides, he ordered the appellant herein to arraign the respondents in the respective District / Resident Magistrate's courts. This was an infraction which violated the rule of natural justice requiring the court to adjudicate over a matter by according the parties full hearing before deciding a dispute. See: **NATIONAL HOUSING CORPORATION vs. TANZANIA SHOES AND OTHERS** (1995) TLR 251; and **ABBAS SHERALLY & ANOTHER vs. ABDUL S. H. M. FAZALBOY**, Civil Application No. 33 of 2002 (unreported) where the Court said:

"The right to be heard before adverse action or decision is taken against such a party has been stated and emphasised by courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice."

Furthermore, a violation of the right to be heard is not only a breach of natural justice but also an abrogation of the constitutional guarantee of the basic right to be heard as enshrined under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977. See - **MBEYA RUKWA AUTO PARTS AND TRANSPORT LIMITED vs. JESTINA GEORGE MWAKYOMA**, Civil Appeal No. 45 of 2000 (Unreported) where, the Court having considered the English case of **RIDGE VS BALDWIN** [1964] AC 40 it observed that:

“In this country, natural justice is not merely a principle of common law; it has become a fundamental constitutional right. Article 13 (6) (a) includes the right to be heard among the attributes of equality before the law, and declares in part:

Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi wa Mahakama au chombo kinginecho kunachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu...”

[See also **SELCOM GAMING LIMITED VS GAMING MANAGEMENT (T) AND GAMING BOARD OF TANZANIA** [2006] T.L.R 2000 and **MIRE ARTAN ISMAIL AND ANOTHER VS SOFIA NJATI**, Civil Appeal No 75 of 2008 (unreported).]

In view of the settled law on the right to be heard, we are satisfied that, the appellant was denied the right to be heard and this occasioned a failure of justice on the part of the appellant which as earlier stated was in violation of the fundamental right that a person shall not be condemned without being heard.

Before concluding we wish to remark that, since the holding charge sheet does not indicate the places of arrest of the respondents, determining a jurisdictional issue on account of asserted places of arrest was indeed uncalled for, considering that the offences are alleged to have been committed along the Kasumulu-Mbeya-Makambako-Iringa-Dodoma Highway.

In the result, we have no option but to declare the Ruling of the High Court a nullity. We invoke the powers vested in us under section 4 (2) of the AJA, and hereby quash the Ruling of the High Court and the proceedings which followed the submission of the appellant's counsel and subsequent orders. We direct, the

application for bail be placed before the same learned High Court Judge for determination of the bail application as soon as it is practicable.

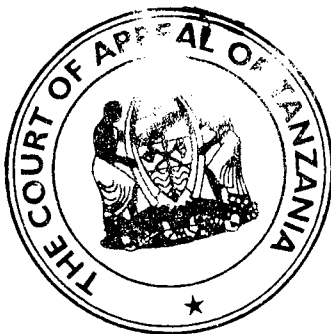
DATED at **DODOMA** this 18th day of June, 2020.

S. E. A. MUGASHA
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

The Judgment delivered on 18th day of June, 2020 in the presence of Mr. Tumaini Kweka, learned Principal State Attorney, Mr. Pius Hilla, learned Senior State Attorney for the appellant / Republic and Ms. Nyanjiga Nyabukika, learned advocate for the Respondents, is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL