

IN THE HIGH COURT OF TANZANIA
THE CORRUPTION AND ECONOMIC CRIMES DIVISION
AT DAR ES SALAAM REGISTRY

MISC. ECONOMIC CAUSE NO. 03 OF 2017

*(Originating from the Resident Magistrates' Court of Dar es Salaam
at Kisutu in Economic Crime Case No. 40 of 2016)*

1. JOSHUA VICTOR MNONJERA 1ST APPLICANT

2. PELE RAPHAEL BRUNO..... 2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

Date of Last Order: - 03/02/2017

Date of Ruling: - 07/2/2017

R U L I N G

F.N. MATOGOLO, J.

The applicants Joshua Victor Mnonjera and Pele Raphael Bruno and two others, Kassim Hassan Said @ Bedui and Joachim Nicolus Minde @ Kennedy John Kimaro are arraigned before the court of Resident Magistrate of Dar-es-Salaam at Kisutu with two counts both under the Economic and organized crimes control Act (Cap.200 R.E.2002) as amended by Act No.3 of 2016.

In the first count they are charged with leading organized crime contrary to paragraph 4(1)(a) of the first schedule to, and sections 57(1) and 60(2) of the Act.

That on diverse dates between March 2013 and August 2015 in Dar es Salaam Region together with other persons intentionally organized and furthered the objectives of a criminal racket by acquiring possessing and exporting from Tanzania to HongKong China and Thailand Government Trophies to wit 3500 kgs of Elephant tusks valued at USD 1,925,000 equivalent to Tshs. 4,202,275,000/= that is four billion two hundred and two million two hundred seventy five thousand only, the property of the United Republic of Tanzania without permit from the Director of Wildlife.

In the second count, they are charged with unlawful dealing in trophies contrary to sections 80(1), 82(1), 84(4) read together with paragraph 14 of the first schedule to, and sections 57(1) and 62(2) of the Economic and organized crime control Act of the Acts as amended.

It is alleged that on diverse dates between March 2013 and August, 2015 in Dar es Salaam Region, together with other persons not in court exported from Tanzania to Hongkong China and Thailand Government trophies that is 3500 kgs pieces of elephant tusks valued at USD 1,925,000, equivalent to Tshs. 4,202,275,000/= say four billion two hundred and two million two hundred seventy five thousand only the property of the United Republic of Tanzania without trophy dealers license or a CITES permit.

As the offences the applicants stand charged are triable by this court, or subordinate courts with the consent of the DPP; they have filed this application so that this court can release them on bail. The application is by Chamber summons made under sections 29(4)(d), 36(1)(5) and (7) of the Economic and organized Crimes Control Act, Cap.200,R.E.2002, the same is supported by two affidavits deponed by the applicants.

On 03rd day of February, 2017 when the application was fixed for hearing, Mr. Innocent Mushi learned Advocate appeared for the applicants while the Respondent/Republic was represented by M/S Elizabeth Mkude being assisted by Mr. Athanas State Attorneys. Mr. Innocent Mushi learned Advocate informed this court that they were served with counter affidavit of the respondent and certificate from the Director of Public Prosecutions objecting for the applicants to be released on bail.

In the certificate filed by the Director of Public prosecutions, the reason for objecting bail to the applicants is that the safety and interest of the Republic will be prejudiced. The certificate was filed under S.36(2) of the Economic and organized crimes control Act Cap.200 RE 2002.

Mr. Innocent Mushi learned Advocate submitted that it is not fair for the DPP to file certificate objecting bail to the applicants, firstly that the offences the applicants are facing areailable offences, secondly that there is no reason given by the DPP to show how the interest of the Republic will be prejudiced and thirdly that the other two first accused who are charged along with the present applicants applied and were granted bail. The learned advocate therefore prayed to this court to disregards the said certificate and proceed to hear the applicant's application.

In her reply submission, M/s Elizabeth Mkude stated that the certificate in question was legally filed and that there is no any provision of the law requiring the DPP to furnish further reasons apart from disclosing that the safety and interest of the Republic will be prejudiced. She said once a certificate by the DPP objecting bail is filed in court under the above mentioned section (S.36(2)) of the Act, it becomes effective from the date it was filed in court up to the time the matter is determined or when the DPP

with draws it from the court under section 36 (3) of the Act. The learned State Attorney referred the court to two court decisions in support of that position:

Manase Julius Philemon V. Republic Misc. Criminal Application No.173/2015 High Court Dar es Salaam Registry (unreported) and **The Direction of Public Prosecutions Vs. Li Ling Ling**, Criminal Appeal No.508 of 2015 CAT, DSM (unreported).

M/s Elizabeth learned State Attorney prayed to this court to dismiss the application.

In rejoinder Mr. Innocent Mushi learned Advocate reiterated what he has stated in his submission in chief that failure by the D.P.P. to give reasons for objecting bail in the certificate he has filed is not fair as it is a known principle of law that any decision not supported by reasons is not a decision. That the DPP is a party to the main case. To allow him to deny bail the other party to the case is not proper which is aimed to deny the other party right.

I propose to start with the first issue raised by Mr. Innocent advocate that is the two offences the applicants are facing are bailable offences.

I think I need not to labour much on this issue. There is no dispute that the offences the applicants are facing are bailable offences. That being the position the learned counsels from both sides have agreed on that and that is the legal position that the offences which the applicants stand charged are bailable offences.

The second issue raised by Mr. Innocent learned advocate is that the DPP did not give reasons in his certificate he has filed refusing the applicants not to be granted bail. The learned counsel has correctly submitted that any

decision should be supported with reasons as without reasons it cannot be the reason. But despite mentioning that it is a principle of law, Mr. Innocent did not cite any provision of the law or case law to back up his argument. But generally I agree with him that any decision especially that given by public officials must be backed up with reasons.

M/s Elizabeth learned State Attorney in her reply submission stated that the certificate filed by the DPP, was filed according to the law. That there is no any provision of the law requiring him to given reasons apart from what was disclosed in the certificate that the safety and interest of the Republic will be prejudiced.

The certificate in question was filed under Section 36(2) of the Economic and organized crimes control Act (Cap.200 R.E.2002). The same provides:

“36(2) Notwithstanding anything in this section contained no person shall be admitted to bail pending trial, if the Director of Public prosecutions certifies that is likely that the safety or interests of the Republic would thereby be prejudiced.”

The words used in the above quoted subsection are very clear, that where the Director of Public Prosecution has **certified** that the safety or interests of the Republic will be prejudiced if any person is granted bail the court shall not grant bail. Mr. Innocent learned counsel in his submission did not go further to explain whether to “certify” means to give reasons. But in my considered opinion I do not think that is what it means. Black’s Law Dictionary 8th Edition defines the word certify to mean to authenticate or verify in writing or to attest as being true or as meeting certain criteria.

The similar definition is given in the Essential Law Dictionary 1st Edition. That is "to confirm formally; to authenticate in writing." There is nowhere in the provision that gives powers to the DPP to issue certificate objecting bail to the accused requiring him also to give reasons for so objecting. There are also several decided cases in which the issue of the DPP to give reason in the certificate was discussed and the emphasis is that once the DPP has certified that the safety or interest of the Republic will be prejudiced if any person is granted bail then the court shall not grant bail. These cases include:- **Method Malyango Busongo and another vs. R.**, Criminal Application No.51/2015. **Lucas Galuma Nyagabati v.R.**, Criminal Application No.107/2015. **The DPP Vs. Li Ling Ling**, Criminal Appeal No.508/2015 CAT DSM (unreported). **Ally Said Ahmed & 6 others v.R.**, Misc. Economic cause No.3 & 4 of 2016 and **Manase Julius Philemon v.R.**, Misc. Criminal Application No.173 of 2015 High court DSM Registry.

The position of law now is that once the DPP has filed certificate and that certificate meet a validity test, the court shall not grant bail. That was the holding in the case of the **Director of Public prosecution V. Li ling Ling** (supra). In this case the Court of Appeal also quoted the conditions for validity of the DPP's certificate which were given in the case of **DPP vs. Ally Nuru Dirie & Another (1988 TLR 2002**

That is:

- (i) The DPP must certify in writing
- (ii) The certificate must be to the effect that the safety or interest of the United Republic are likely to be prejudiced by granting bail in the case; and
- (iii) The certificate must relate to a criminal case either pending for trial or pending for appeal.

If that is the position, Mr. Innocent learned counsel cannot be heard complaining that in the DPP's certificate he did not give reasons. The DPP is not required under the law to give such reason apart from certifying that the safety or interest of the United Republic are likely to be prejudice. And that alone suffices for the applicants not to be granted bail.

This therefore appears to be an exception to the general rule that every decision must be supported with reasons and that is because the law states so. The last issue or argument Mr. Innocent raised is that, the DPP is not fair to file the certificate objecting bail to the present applicants to be granted bail because the other two accused who are charged together with the applicants were granted bail.


It was correctly submitted by the learned State Attorney that is not relevant to the present application. Granting bail to one or some of the accused persons who are jointly charged cannot be the reason for granting bail to the applicants also. The DPP is not bound to file certificate objecting bail to all of them. Similarly, the circumstances which led to those other two accused to be granted bail cannot be said the same to that led to the DPP to file the certificate objecting bail to the present applicants. Circumstances may change from time to time. Even the circumstances leading to the safety or interest of the Republic to be prejudiced cannot be said to have been caused by all accused persons. This court therefore do not see that as good reason to move it to disregard the certificate filed by the DPP. Once the said certificate is filed, it remains in force until when the DPP withdraws it or when the proceedings come to an end, that is how the law directs.

Subsection 3 of section 36 is very clear. The same provides:-

“36(3) A certificate issued by the Director of Public Prosecutions under subsection (2) shall take effect from the date it is fixed in court or notified to the officer incharge of a police station and shall remain in effect until the proceedings concerned are concluded or the Director of Public Prosecutions withdraw it”

The DPP filed the certificate in question on 27th January 2017 signed by himself. It means that the same take effect from that date until when the DPP will decide otherwise or until when the proceedings come to an end. The certificate filed by the DPP has met the validity criteria and worth to be acted upon.

In this application I do not see the circumstances under which this court can disregard the certificate filed by the DPP objecting bail to the present applicants. As I have pointed out above the certificate under consideration is valid both in format and contents. Given the point of objection raised in the certificate filed by the DPP and in the light of the decisions in the cases cited above, and the reasons given above this application is hereby dismissed.


F.N. MATOGOLO
JUDGE
07/2/2017

Date: 07/02/2017

Coram: HON. F. N. Matogolo, J.

For Applicants: Mr. Innocent Mushi, Advocate

1st Applicant: Present

2nd Applicant: Present

Respondent: Absent

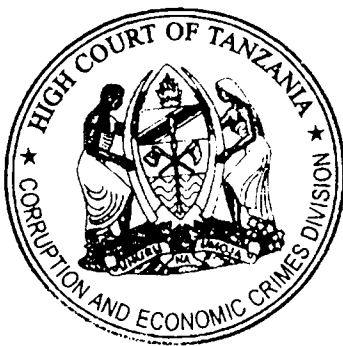
B/Clerk: Mr. N. C. Malela

Mr. Innocent Mushi – Advocate

My Lord I appear for the applicants. The Republic are not present.

My Lord the application is for ruling today.

Court: Ruling delivered today the 07th day of February, 2017 in the presence of both applicants and in the presence of their Advocate Mr. Innocent Mushi but in the absence of the Republic/Respondent.



F.N. Matogolo
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JUDGE
07/2/2017