

**IN THE HIGH COURT OF TANZANIA
MAIN REGISTRY
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 79 OF 2017**

FARID HADI AHMED & OTHERS.....	1ST APPLICANT
JAMAL NORDIN SWALEHE.....	2ND APPLICANT
NASSOR S/O HAMAD ABDALLAH.....	3RD APPLICANT
HASSAN S/O BAKARI SULEIMAN.....	4TH APPLICANT
ANTHARI S/O MUHUD AHMED.....	5TH APPLICANT
MOHAMED S/O ISIHAKA SUSSUPH.....	6TH APPLICANT
ABDALLAH S/O HASSAN @ JIBABA	7TH APPLICANT
HUSSEIN S/O MOHAMED ALLY.....	8TH APPLICANT
JUMA S/O SADALA JUMA.....	9TH APPLICANT
SAID S/O KASSIM ALLY.....	10TH APPLICANT
HAMIS S/O AMOUR SALUM.....	11TH APPLICANT
SAID S/O AMOUR SALUM.....	12TH APPLICANT
ABUBAKAR S/O ABDALLAH MNDODO.....	13TH APPLICANT
SALUM S/O ALI SALUM.....	14TH APPLICANT
SALUM S/O AMOUR SALUM	15TH APPLICANT
ALAWI S/O OTHMAN AMIR.....	16TH APPLICANT
RASID S/O ALI NYANGE @ MAPALA.....	17TH APPLICANT
AMIR S/O HAMIS JUMA.....	18TH APPLICANT
KASSIM SALUM NASSORO.....	19TH APPLICANT
SAID SHEHE SHARIFU.....	20TH APPLICANT

MWAJUMBE WENDU BAKARI.....24TH APPLICANT
HUSSEIN ALLY TAGELILE.....25TH APPLICANT
JIHAD GAIBON SWALEHE.....26TH APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS (DPP).....1ST RESPONDENT
DIRECTOR OF CRIMINAL INVESTIGATIONS (DCI)2ND RESPONDENT
THE HONOURABLE ATTORNEYGENERAL.....3RD RESPONDENT

RULING

Mkasimongwa, J

FARID HADI AHMED AND 25 OTHERS (the names listed above),
 apply to the Court for leave to file an application for prerogative orders of
 Mandamus for the Court to make an order requiring the Director of Public
 Prosecution (DPP), the Director of Criminal Investigation (DCI), the 1st and
 2nd Respondents, respectively, to complete investigation and proceed with
 conducting and prosecuting the Preliminary Inquiry Cases No. 29 of 2014,
 No. 8 of 2015 and No. 31 of 2015 facing the Applicants at the Resident
 Magistrate's Court of Dar es Salaam at Kisutu pending for more than three
 years.

The Application is by way of Chamber Summons filed under Section
 19 (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions)
 (Judicial Review Procedure and Fees) Rules, 2014 (G.N No. 324 of 2014)
 and it is supported by the Affidavit sworn by Mr. Abubakar Salim an
 advocate for and on behalf of the Applicants in the case in the subordinate
 court.

In the Affidavit the deponent avers that the Applicants were arrested by the police and investigation was mounted and conducted by the police and coordinated by the DPP under the law relating to the National Prosecution Services. In that connection the applicants were charged in court vide Preliminary Inquiry Cases No. 29 of 2014, 8 of 2015 and 31 of 2015 in the Resident Magistrate's Court of Dar es Salaam at Kisutu. Currently the applicants are remanded in custody in Ukonga and Segerea Prisons pending finalization of the inquiries.

In the Affidavit it is also averred to the affect that the applicants are charged with, among other offences, Recruiting persons name participate in terrorist acts and also Harboursing people (named) knowing that such persons had committed terrorist acts. Since when, the first case was instituted sometime in August, 2014 the 1st Respondent has been seeking for adjournments from the court on ground that he has not completed investigations. The Applicants' prayers to have the charges dismissed have been resisted by the 1st Respondent and refused by the Court on the same ground that the investigation is incomplete which investigation has not been competed for about more than three years.

The Application is resisted by the Respondents who in turn filed a Counter Affidavit. On the date matter came up for hearing only Mr. Abubakar Salim, advocate for the applicant appeared before the court. Mr. Hosea, learned State Attorney who was well aware of the date and time fixed for hearing of the Application was absent. There were no reasons assigned by him to justify the absence and upon having been so satisfied

and from the fact that, this matter had been unnecessarily long in Court the Court ordered for ex-parte hearing of the same.

When was asked to argue on the matter Mr. Abubakar, adopted the contents of the Affidavit filed in support of the Application in his submission. He added that in terms of Rule 7 (1) of the G.N No. 324 of 2014 leave may be granted by the Court without hearing the Application and under Rule 7 (2) of the Rules; where desirable the judge may hear the application. Rule 7 of the Rules was enacted so that to avoid arguments during the leave stage of the matter. At the leave stage what the Applicant is expected of is to show that there is a prima facie case. This position had the Court in the case of NJUGUNA V/S MINISTRY OF AGRICULTURE (2000) 1 EA 148 AT 186 where the Court was of the view that leave should be granted from the material available to Court, it considers without young into the matter in depth that there is arguable case for granting leave. Mr. Abubakar Salim submitted further that the offence with which the applicants are charged with are not such that are so complicated to have led to a complicated investigation that required the period of more than three years. He prays under the circumstances that the application be granted. That is all from the learned advocate.

In this matter it has been amply shown that the Applicants were arrested by the police suspected of offences and that some were charged with Conspiracy to commit an offence Contrary to Section 27 (c), Recruitment of persons to participate in terrorist acts Contrary to Section 21 (b) and Harboring of Persons committing terrorist acts Contrary to Section 19 (a) of the Preventions of Terrorism Act No. 21 of 2002 and

some were charged with Conspiracy to commit an offence Contrary to Section 27 (c); Provisions of funds to commit terrorist acts Contrary to Section 13 and Arranging for retention and control of terrorist property Contrary to Section 16 (a) all of the Prevention of Terrorism Act No. 21 of 2002. They were so charged some vide Preliminary Inquiry No. 29 of 2014 and others in Preliminary Inquiry No. 8 of 2014 filed on 3/9/2014 and in 2015 respectively. Again it has been amply shown to the Court that since when they were arrested and charged in court the Applicants have been under Remand custody to date. Hearing of the cases could not commence due to the fact that investigation is incomplete. It has remained so for about 3 - 4 years now. The Applicants intend to apply for an order of mandamus to require the DPP and the DCI complete the investigation and proceed with conducting and prosecuting the Preliminary Inquiries. As it was held in the case of NJUGUNA v MINISTRY AGRICULTURE (Supra) in granting leave the Court has to consider from the material available without going into the matter in depth that there is arguable case for granting leave. The issue is therefore whether there is arguable case for granting leave from the materials available to the court. In deciding the issue, I have considered, the period under which the investigation has been going on that is three to four years now. I think the Court shall have an opportunity to hear whether the period is reasonable or not in investigating on the cases the applicants face in Court. I have also considered the nature of the offences the applicants stand charged with and I am of the view that it is important if the parties will be heard whether there is complexity in the investigation or not. Again I have

considered the fact that the accused persons, applicants in this matter, have been under Remand Custody since when they were arraigned in Court and that bail was denied to them. Such consideration leads the Court to find that in the circumstances of this case, the applicants have arguable case. As such this application for leave is hereby granted to the applicants for them to file an application for the prerogative order of Mandamus as prayed. No order as to costs is made.

Dated at Dar es Salaam this 20th of April 2018.


E. J. Mkasimongwa

JUDGE

20/4/2018

Court: Ruling delivered in Chambers this 20th day of April, 2018 in the presence of Mr. Abdul Fatah, advocate for the Applicants and in the absence of the Respondents.


E. J. Mkasimongwa

JUDGE

20/4/2018