

**IN THE HIGH COURT OF TANZANIA
CORRUPTION AND ECONOMIC CRIMES DIVISION**

AT SONGEA

MISC. ECONOMIC CAUSE NO. 14 OF 2018

**(Originating from Tunduru District Court Criminal Case No.
11/2018)**

JOHN IKLAND @ AYUB APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

16.7.2018 & 17.7.2018

MATOGOLO,J

John Ikland @ Ayub, the applicant in this application initially was convicted by the District Court of Tunduru of unlawful possession of Government Trophy and sentenced to thirty years imprisonment. His appeal to the High Court (RM'S with extended jurisdiction) was dismissed. He further appealed to the Court of Appeal where the proceedings and

judgment of both the District Court and Resident Magistrate with extended jurisdiction were nullified. The Court of Appeal ordered retrial by the District Court. The applicant has come to this court with his application for bail pending retrial.

His application is by chamber summons made under Article 13(b)(a) of the constitution of the United Republic of Tanzania sections 29(4)(d) and 36(1) of the Economic and Organized Crime Control Act, [**Cap. 200 R.E. 2002**]. The application is accompanied by an affidavit of the applicant. The respondent was served with the relevant documents chamber summons and affidavit. She filed notice preliminary objection together with counter- affidavit taken by Jenerosa Montano State Attorney.

The mentioned learned State Attorney argued the preliminary objection which was couched in three limbs as follows:-

1. The chamber summons is incurably defective.
2. The affidavit in support of the chamber summons is incurably defective.
3. The applicant has cited a wrong name of the court.

Expounding those points of objection, the learned State Attorney submitted that starting with the jurat of attestation which she said is

defective as the commissioner for oath before whom the applicant take oath did not indicate as to who introduced the applicant to him. He just recorded that the applicant was introduced to him by the Prison Officer whose name was not disclosed. And whether that Prison Officer was known to him.

Secondly M/s Jenerosa Montano learned State Attorney submitted that the name of this court was not properly cited. The applicant cited it as **IN THE HIGH COURT OF (T) AT SONGEA DIVISION OF ECONOMIC AND CORRUPTION SONGEA REGISTRY.** She said section 4 of the interpretation of Laws Act, clearly provides that this court is referred to "the High Court of the United Republic of Tanzania." But also this division is referred to as "corruption and Economic Division of the High Court." **Thirdly** the applicant's affidavit verification clause is not dated. **Lastly** he argued that the chamber summons was signed by the applicant himself by affixing his right thumb instead of being signed by the Deputy Registrar.

On his part the applicant did not say anything useful in response. He only pleaded to this court to assist him as he has been in prison for a long time. That he is not the one who prepared the documents, the one

who prepared the documents made error and that he is not conversant with both the law and English language. He stated further that after the decision of the Court of Appeal it was ordered that the case has to start afresh but he will remain in custody till the retrial begins. He has been going to court to be told that investigations are incomplete that is why he is praying for bail.

As I pointed out earlier, the applicant did not respond to the preliminary objection raised. But starting with what the applicant himself told this court that in nullifying the proceedings and judgments of both lower courts, the Court of Appeal ordered a retrial by the District Court of Tunduru. But there was another order that the applicant to remain in custody until retrial begins. The applicant has confirmed that retrial has not started. The applicant did not attach in chamber summons and affidavit that copy of judgment of the Court of Appeal. But during the hearing he showed it to the court to see what was ordered. It is true, that is what was ordered. Then the immediate issue is whether this court can vary the order of the Court of Appeal. The answer is no. This court has no mandate to vary the order of the superior court. The applicant was ordered to remain in custody until a retrial begins. Now going to the point of objection raised, it is true that the way the

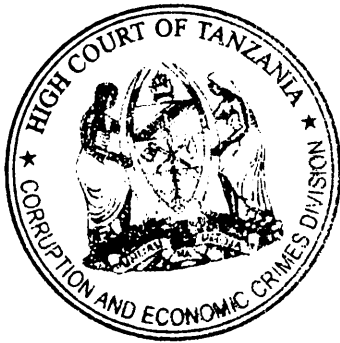
chamber summons was drafted could not allow the Deputy Registrar to append his signature. Below the word GIVEN UNDER my hand and seal of this Honorable court on the day 2018 there is the applicant's signature.


This is not the format the chamber summons is supposed to be, instead of the word (Applicant) the words Deputy Registrar should be put there. But again as correctly argued by the learned State Attorney the applicant's affidavit verification was not dated.

Looking at the said affidavit it is true that the verification clause is not dated. Again is the jurat of attestation, the commissioner for oath did not conform to the format proscribed in the scheduled to the oaths and Statutory Declarations Act [Cap 34] as prescribed under section 10 of that Act.

As to the name of this court, the same is referred to "the High Court of the United Republic of Tanzania," Corruption and Economic Division Songea Registry, establish under section 3 of Act No. 3/2016. Although the error made by the applicant in citing this court is not fatal but it is advisable for it to be properly cited. Having stated as here in above, it is obvious that the application is incompetent for being supported by a

defective chamber summons and affidavit. Also by reason of the order given by the Court of Appeal for the applicant to remain in custody until the retrial commences. Objection is therefore sustain and the application is hereby struck out.

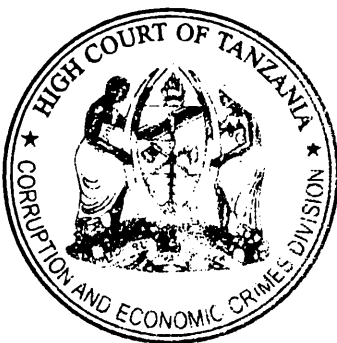




F.N. MATOGOLO
JUDGE

17/07/2018

COURT:

Ruling delivered today this 17th day of July, 2018 in the presence of the applicant and in the presence of Jenerosa Montano learned State Attorney.




F.N. MATOGOLO
JUDGE

17/07/2018