

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

CRIMINAL APPL. NO. 19 OF 2018

*(C/f District Court of Longido at Longido Economic Crime and organized Crime Contral
Act 1/2018)*

SAIBULU MELAU SINDAMWE @ MOLLEL.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

DR. OPIYO, J.

This is an application preferred by the Applicant seeking for grant of bail pending completion of investigation, commencement of trial and final determination of committal proceedings in Economic Crime Case No. 1/2018 pending before Longido District Court.

The Applicant is charged with the economic offence of unlawful hunting and killing of specified animals contrary to section 47(a) of the Wildlife Conservation Act. No 5 of 2009 read together with section 57(1) and Paragraph 14(a) of the First Schedule to the Economic and Organised Crime Control Act, CAP 200 R.E. 2002.

In this application the Applicant was represented by Mr. Njau learned Counsel and the Respondent on the other hand was duly represented by Alice Mtenga, Learned State Attorney. This application was heard orally on 11/4/2018 whereby both sides presented their arguments as summarise as hereunder.

On the side of the Respondent, learned State Attorney submitted that the applicant filed application for bail, but the Respondent has filed certificate by the Director of Public Prosecution (DPP) under Section 36(2) of the Economic and Organised Crimes Control Act, Cap 200 R.E 2002. She went further submitting that by filing the certificate by DPP this courts hands are tied in granting bail to the applicant from the date of the filing of certificate. In cementing her argument she cited the case of **Emmanuel Simforian Massawe V. R, Criminal Appeal No. 252 of 2016 Dar es Salaam, CA.** in which it was held that upon filing of certificate by the DPP, the courts hands are tied to grant bail to the accused. For that reason, she strongly objected bail to be granted to the Applicant.

Mr. Njau, learned Advocate for the applicant in the first place conceded to the fact that they were served with the DPP's Certificate objecting applicants bail application. That, they are alive to the Court of Appeal decision in the case of **Simforian Massawe** (supra) referred to by the learned State Attorney, but seriously contended that Article 107A of the constitution of the united Republic of Tanzania 1977 as amended from time to time gives a court jurisdiction to deliver justice to Tanzanians without due regard to technicalities. He went further argued that the DPP is a party

in this case, so he has no right to bar court from delivering justice to the accused person, applicant for that matter. As such, he had a firm view that that the act of the DPP of issuing certificate is with ill intent to deny the applicant right of bail since DPP has not complied with section 8 of Act No. 27 of 2008 requiring him to administer justice and avoid abuse of process.

Mr. Njau submitted further that, the offence which the Applicant stand charged with is bailable under the law and that by virtue of Section 13(6)(b) the accused is still innocent unless proved guilty by the court. Mr. Njau backed up his argument by citing the decision of this court by Hon. Matogolo J, in the case of **Antonia Zakaria Wambura v. R, Misc. Economic Cause No. 01 of 2018 (Mwanza)- Unreported** where it was stated that when DPP's Certificate is in bad faith it will not bar the court to exercise Justice. On the strength of the above cited authority and reasons, Mr. Njau prayed that this court be pleased to grant this application.

In rejoinder, Ms. Mtenga insisted that, that the certificate by the DPP is valid and it has tied hands of this court to grant bail to the Applicant. She submitted further that, though the Applicant's Advocate has referred to different Articles of the Constitution of Tanzania supporting bail to the applicant, but the section under which the DPP filed the certificate in this case has never been declared unconstitutional, so it is still a valid provision of law which has not violated any Article in the our Constitution.

Learned State Attorney stated that, the applicant's Counsel lamented that DPP acted in bad faith and abused the court process, but he did not explain how the DPP has acted in bad faith or has abused the court process. In addition to that, the State Attorney insisted that DPP is not under any legal duty to state reason/s as why he preferred the certificate as stated in the case of Emmanuel Simforian Massawe (Supra).

Another point made by the learned State Attorney is that, the case of **Antonia Zakaria Wambura** cited by the Respondent's Advocate is a High Court's case that is merely persuasive to this court while **Emmanuel Simforian Massawe's** case is of the Court of Appeal which is superior to this court and as such binding to this court.

Having closely studied the arguments of both parties in this application, the finding of this court is as follows. First and foremost, it is pertinent to be noted that the Applicant is charged with Economic Crime as demonstrated right from the outset and the law under Section 36(2) of the Economic and Organised Crime Control Act (CAP 200 R:E 2002) gives the Director of Public Prosecution power to file certificate that denies the accused person right to bail. The Court of Appeal on the other hand echoed what is stated in this provision in the case of **Simforian Massawe** referred to by the learned State Attorney. And since the decision of Court of Appeal is binding to this court, I have been left with no any other option than sharing the view by the learned State Attorney that once the DPP files certificate objecting bail under the above cited provision of law, the courts hands are tied to grant bail to the applicant.

It follows therefore that, as much as I may agree with the learned Advocate Mr. Njau argument that bail is a constitutional right which should not lightly be fettered by the court, yet, I find it difficult to circumvent the binding principle of law to grant this application because of one logical legal reason that the provision invoked by the DPP to file certificate that has denied the Applicant right to bail has never been declared unconstitutional by the court as correctly stated by the learned state Attorney. The case of **Antonia Zakaria Wambura** referred by the counsel for the applicant, being this court's decision, cannot override the principle established subsequent to it by the superior court, the Court of appeal of Tanzania.

Thus, in the final analysis and for the above reasons, I hereby dismiss this application for lack of legal basis. Therefore this application is hereby dismissed.

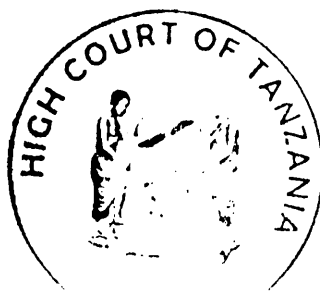
(SGD)

DR. M. OPIYO,

JUDGE


8/6/2018

I hereby certify this to be a true copy of the original.




DEPUTY REGISTRAR

ARUSHA


05/07/2018