

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

MISC- CRIMINAL APPLICATION NO. 32 OF 2018

(Originating from Resident Magistrate Court, Economic Crime No. 118 of 2017)

PAUL TARAIYA LAIZER @ PAUL LONGESO.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING.

S.M. MAGHIMBI, J:

The applicants herein, through the services of Mr. Ngemela advocate, have filed this application under the provisions of Section 29(4)(d) and Section 36(1) of the Economic and Organized Crimes Control Act, Cap. 200 R.E 2002 (the Act). They are seeking for orders that:

1. The honorable Court be pleased to admit the accused persons to bail
2. Any other relief(s) the Honorable Court may deem just and fit to grant.

The Chamber Summons was supported by an affidavit of Mr. Daudi Harak, learned advocate dated 22nd day of May, 2018 the same filed in Court on 23rd day of May, 2018. For the purpose of grasping the basis of this application, the brief background of this application is that the applicant herein and another person not a party to this application are the accused persons in Economic Case No. 118/2018 pending before the Arusha Resident Magistrates' Court. In that case, the applicants were charged

with two counts. He stands charged with the offence of Unlawful possession of Government Trophy c/s 86(1) and (2) (c) (iii) of the Wildlife Conservation Act No. 5 of 2009 read together with Paragraph 14 of the First Schedule to and Section 57(1) and 60(2) both of the Act as amended by Sections 16(a) and 13(b) respectively of the Written Laws (Miscellaneous Amendments) Act. No. 3/2016.

Subsequent to the filing of this application, on the 22/06/2018 the respondent, the Director of Public Prosecutions (DPP) filed a certificate u/s 36(2) of the Act (The Certificate) that the applicant should not be granted bail. Before this court the applicant was represented by Mr. Ngemela, learned advocate and Ms. Sabina Silayo, learned Senior State Attorney represented the respondent, the DPP.

On the onset of his submissions, Mr. Ngemela prayed that the affidavit and annexures thereto in support of the chamber application be adopted to be part of his submissions. He then submitted that the applicant is basically requesting this Hon Court to admit him in bail pending Economic Case No. 118/2017 which is now pending in the resident magistrate's court of Arusha at Arusha and should the applicant be granted bail by this court, he will meet the bail conditions which will be set by this court and the applicant has reliable sureties. He contended that the respondent has not filed a counter affidavit showing that he disputed the applicant to be granted bail by this court. That since it is a customary practice of this court that if someone objects application supported by affidavit, one has to bring a counter affidavit showing that what was deposed and so far no any counter affidavit has been filed which implies that the respondent accepts the applicant to be granted bail upon satisfaction of the bail conditions.

Mr. Ngemela then informed the court that on the day of the hearing is when they were served with the certificate by DPP made under Section 36(2) of the Cap. 200, intending to inform this court not to admit the applicant into bail for reason advanced as the protection of the interest of the republic and interest of the applicant.

Submitting on the reasons advanced by the DPP in the certificate, Mr. Ngemela first addressed the first reason, the safety of the applicant. His submission was that the applicant is applying this bail believing that his safety can also be well protected outside as he believes that outside the custody there is safety that the applicant can well live and meet and satisfy the bail conditions. He hence argued that the safety of the applicant is not an issue for as long as it is himself who is applying for bail.

Coming to the issue of interest of the republic, Mr. Ngemela submitted that these interests which will allegedly be prejudiced have not been explained by the DPP. That they could well be explained in the counter affidavit. That they have carefully gone through this certificate and found that there is a lot of concern for this court to rely on this court as a true certificate of the DPP. He pointed out that first, there is no stamp or any sign showing that this document was prepared by the DPP arguing that there should be at least a stamp or seal showing that the document was prepared by DPP. The mere signature of the named person Biswalo is not sufficient. Further that there is no indication that the certificate was drawn and filed by the DPP as it misses to say who drew and filed this certificate. He argued that the document couldn't have been prepared to the effect of showing that the court received it, it does not show that it was received in court. he

then prayed that the court go through and expunge this certificate because of its defectiveness and continue admitting the applicant to bail.

In reply, Ms. Silayo submitted that the respondent objects the applicant to be granted bail and have filed the certificate to that effect on 22/06/2018 under Section 36(2) of Cap. 200. She submitted further that once a certificate by the DPP is filed, the court cannot proceed to grant bail and referred this court to the case of **Emanuel Simforian Massawe Vs. R, Criminal Appeal No. 252/2016** (unreported) at page 15 where it was held:

"we are of the settled view that just like the trial court, that once a certificate is filed u/s 36(2) of the Act is found to have been validly filed, the same bars the trial court granting bail to the accused and we are of the considered view that it is not a requirement of the law for the DPP to give reasons objecting bail where he considers that the safety and interests of the republic are likely to be prejudiced."

She hence argued that once a certificate has been filed, there is no need for the respondent to file counter affidavit as the certificate of the DPP is filed according to the law and not the practice of the court. She argued that although Mr. Ngemela stated that the respondent did not file counter affidavit as practice of the court, he did not state that the counter affidavit needed to be filed was as per which law. She hence argued that the filed certificate prevails counter affidavit.

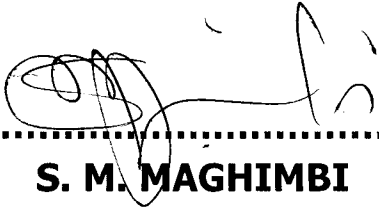
She concluded that the certificate is properly filed before the court as the learned counsel did not state which law requires the certificate to be stamped and prayed that the same is enforced.

In his rejoinder, Mr. Ngemela started with the cited case of **Emanuel Simforian Massawe Vs. R** cited by Ms. Silayo. His argument was that although it is true that the Court of Appeal ruled that once a valid certificate has been filed u/s 36(2) it bars this court to continue, the issue before hand is that the certificate must be validly filed, if it is defective it is not a valid certificate. He reiterated his submission in chef that the certificate was invalid and argued the certificate file is a purported certificate and not actually a certificate.

Upon hearing the submissions from both parties, I shall not be detained much in this application. There is no law (particularly no provision in the Cap 200) which requires that the certificate filed by the DPP should be stamped. The certificate filed was received in court and stamped by the Deputy Registrar as per the procedure hence it is a valid certificate. That said, it is trite law that whenever the certificate is filed, the court's hands are fettered. The position was held in the cited case of Emanuel Massawe emphasizing their position in the case of Li Ling Linbg and it is for that reason, since there is on record the certificate filed I cannot proceed to grant the prayers sought in this application as my hands are tied. The application is consequently dismissed.

Application Dismissed.

Dated at Arusha this 30th day of August, 2018


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S. M. MAGHIMBI
JUDGE