

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

**AT ARUSHA**

**MISC- CRIMINAL APPLICATION NO. 05 OF 2018**

*(Originating from Resident Magistrate Court of Arusha  
Economic Case No. 9 of 2018)*

**GEORGE S/O LAZARO OGUR.....1<sup>ST</sup> APPLICANT**

**MAKIA S/O ABIA SAMWAJA.....2<sup>ND</sup> APPLICANT**

**VERUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

*Date of last Order: 18/05/2018*

*Date of Ruling: 03/08/2018*

**BEFORE: S.C. MOSHI, J:**

The Applicants, GEORGE S/O LAZARO OGUR and MAKIA S/O ABIA SAMWAJA filed an application to be released on Bail under the Provisions of Section 29(4) (d), and Section 36 (1) of the Economic and Organized Crimes and Control Act [Cap. 200 R.E. 2002]

However before the application was heard the Director of Public Prosecution (The D.P.P) filed a certificate under the provisions of Section 36(2) of the Economic and Organized Crimes Control Act, Cap. 200 R.E. 2002 as amended. The D.P.P certified that the applicants should not be granted bail on the ground that, if bail is granted the safety and interest of the Republic will be prejudiced.

At the hearing of the application the applicant was represented by Mr. Mgalula, Advocate whereas the Republic (Respondent) was represented by Miss Tarsila, State Attorney.

Mr. Mgalula argued that, he has seen the Certificate; however he did pray to challenge it; because it violates the Applicant's basic Rights of their freedom of movement and their rights to Bail pending determination of Economic Case No. 9/2018. He referred this court to the case of **R V Jeremia Mtobesya, Court of Appeal** the decision that upheld Misc. Civil Cause No. 29/2015, whereby at page 70, the court stated that Section 148 (4) of Criminal Procedure Act that empowers the DPP to file a certificate was declared Null and Void. He said that, Section 36(2) of Cap. 200 was used Mutatis Mutandis by the Court at page 53.

He contended that, there is a very recent decision Economic Cause No. 01 of 2018 between **Antonio Zacharia Wambura & Another Vs Republic**, where Motogoro, J held that:

*"The DPP's Act to file certificate denying bail to the Applicant I can say it is just an expression of fear. The fear by DPP.....it is unjustifiable.....The DPP's certificate is given no weight"*

It was his argument that, the filing of DPP's certificate is unlawful, hence the Certificate is incompetent. He also argued that, the citation is wrong, they cited Section 36 (2) of Cap 200 as amended. They didn't state the specific amendment. The principle Legislation is Cap. 200 as Revised in

2002. For the D.P.P not citing proper Provision of Law the Certificate is rendered incompetent. He did pray that the Applicants be released on bail.

Miss Tarsila objected the grant of bail, and argued that, it is true that Bail is a right but it is not an absolute Right because there are laws and Court's jurisprudence that shows the offences that are bailable and the ones that are not bailable and the reasons. She said that, one of such laws is the **Economic Organization Control Act**, Cap. 200, as amended, specifically Section 36(2) that gives powers to the D.P.P to issue certificate objecting bail where he considers safety of the Public is likely to be predicated.

Regarding the case of **Jeremia L. Mtobesya v R** (supra), she said that, the Court of Appeal of Tanzania declared Section 148 (4) of the Criminal Procedure Act unconstitutional. The Court took note that there are Provisions in Cap 200 and Drug Trafficking Act which have similar effect. However, they declared Section 148 (4) unconstitutional; they observed that the issue before them was in respect of Section 148 (4) not otherwise.

Also in the case of Antonio **Zacharia and others v R**, Mwanza High Court Motogoro, J, in his ruling, he said that he would reject the Certificate but they should proceed with hearing. The Judge insisted on the Right to be heard.

It was Ms. Tarsila's argument that, what is before this court is Bail Application, the Jeremiah Mtobesya's case was a constitutional case. In the case of **Emmanuel Simphorian Massawe v R**, Criminal Appeal No. 252/2016; the Court of Appeal sitting at Dar-es-Salaam held that once the

Certificate filed by the DPP under Section 36 (2) of the Act is found to have been validly filed, the same bars the trial Court from granting bail to the accused and they were of the considered view that it's not the requirement of Law for DPP to give reasons for objecting bail where he considers that the interest of the Republic would be prejudiced.

She argued that, the Certificate is properly filed. When the certificate is filed, the Court's hands are tied to grant bail. Regarding the applicant's counsel argument that the citation is wrong, she did refer the Court to the interpretations of the Laws Act, Cap.1 Section 12. It explains that when one refers to the amended Laws, the word 'amended' should appear. The D.P.P cited the Principal Law, the chapter, the specific Section and the word amended as the Law has been amended various times. The Advocate didn't explain the circumstances that the Court may reject the certificate. She did pray for the Court to consider the certificate and deny the bail.

I have considered both sides' submissions.

It is common ground that, the D.P.P has been given powers under Section 36 (2) of Cap. 200 to file a certificate certifying that the accused/applicant should not be released on bail on the ground that if bail is granted the safety and interest of the Republic will be prejudiced

It is also common ground that in **Mtobesya's case** the Court discussed the constitutionality of section 148 (4) of the CPA, and declared it unconstitutional.

It is also true that the provisions of Section 148(4) of the CPA and Section 36(2) of Cap. 200 are similar. However, this issue was discussed by the Court of Appeal in the case of **Emmanuel Simforian Massawe** (supra) at page 15. The Court held *inter alia* that:

*"...as rightly argued by Mr. Kweka, learned State Attorney, Mtobesya's case (supra) was a constitutional petition challenging the constitutionality of Section 148 (4) of the CPA, whereas the present appeal is of a Criminal nature and its gist is to challenge the certificate of the DPP filed under Section 36 (2) of the Act, objecting the right of bail. We therefore fail to buy and apply the statutes in pari material principle as propounded by the appellant counsel in the circumstances."*

In the same case, the Court enumerated the conditions to be met for the certificate to be valid, they are:

- 1. The DPP must certify in writing*
- 2. The certificate must be to the effect that the safety and public interests of the United Republic are likely to be prejudicated by the granting bail in the case;*
- 3. The certificate must relate to a Criminal case either pending trial or pending appeal.*

Since the three conditions were met I find that the DPP's certificate was valid and was properly filed in accordance with the law. And it is trite law that, once the DPP's Certificate has met the validity test, the court shall not grant bail and there is no requirement of the Law for the DPP to give

reasons for objecting bail where he considers that the safety or interest of Republic is likely to be prejudiced. The DPP certificate could only be invalid where it proved that he acted in bad faith or abuse of court process, something which was not established and proved before this court.

Consequently for the foregoing reasons, bail application is refused. The accused persons should be further remanded. The application for bail is dismissed accordingly.



  
**S.C. MOSHI**

**JUDGE**

**08/06/2018**