IN THE HIGH COURT OF TANZANIA

DAR ES SALAAMDISTRICT REGISTRY

AT DAR ES SALAAM

Misc. Economic Cause No. 164 OF 2019

SIMON YARED MDAKILWA.....APPLICANT

AND

THE REPUBLIC.....RESPONDENT

RULING

25/9/ - 2/10/2019

J. A. De- Mello, J;

The three accused persons before Committal proceedings at **Kisutu Resident Magistrate's Court** has been arraigned and, charged with four counts namely; **Conspiracy, Stealing, Obtaining Money by False Pretence** and, **Money Laundering** all falling under the **Economic and Organized Crime Act Cap. 200 RE 2002.** This Court which has jurisdiction, has been moved by s**ection 29 (4) (d)** of the **Economic and Organized Crime Control Act, Cap. 200 RE 2002,** with **Counsel Nehemia Nkoko** swearing an Affidavit on the Applicants, behalf praying for its adoption. Departing from the usual and common practice, **Counsel Nkoko** submits that so long as the offences have been charged under the **EOCA Cap. 200** as opposed to

the **Criminal Procedure Act Cap. 20** in whose **section 148 (5) (a) (iv**) renders bail available to Money Laundering offences, this Court should grant. The case of **Edward Kambuga & Another** vs. **Republic [1990] TLR 84** to fortify his position, emphasizing the Courts powers to grant Bail to Money Laundering in this instance case. The new **Amendments in Cap. 200** have brought changes for availability of Bail to Money Laundering, it being silent, he reiterates.

Fiercely opposing the Application **State Counsel Tuli** categorically reiterated the misguidance that **Counsel Nkoko** attempts to mislead the Court. She pointed out that nothing new has changed Money Laundering to depart from **section 148 (5) (a) (iv) of Cap. 20** which still prevails amidst the amendment in the **EOCA.** She availed the Court, as well as the Applicants to the very current position of the Court of Appeal in the case of **James Burchard Rugemalira** vs. **Republic, Criminal Appeal No. 391** of **2017** was shared with a view of supporting Counsel's contention that, Money Laundering under EOCA as opposed to one charged under **section 145 (5) (a) (iv) (supra)**still not Bailable. She finds nothing credible in the Applicants submissions to move the Court to act as prayed.

In a brief rejoinder **Counsel Nkoko** emphasize his assertion that, the **1990** case of **Edward Kambunga** was and, still remains the superior as opposed to the current **2017** one of **James Rugemalira** highly distinguishable from the Application in this Court.

I am grateful for Counsels submissions but more so for the two cases that have been furnished and all of which I give credit and, respect, for such intelligent analysis and reasoning, more so from Nkoko. However and, with due respect to **Counsel Nkoko**, the 1990 decision to superceeds 2017 from the same Court of Appeal sounds unrealistic. I am aware of conflicting decisions that the Superior Court might at different occasions face and practice has it that in the absence of Review, the current one will always prevail. My reading from the first paragraph of **Rugemalira's case (supra),** and, which **Counsel Nkoko** bases his contention in defending his stance for charge of his client brought under the EOCA and not CPA, and, I quote;

"Even then we are satisfied that section 4 of CPA provides the general rule that all offences are treated under the CPA unless the exception is expressely stated".

4 (2) All offences under any other law shall be inquired into, tried and otherwise dealt with according to the provisions of this Act, except where that other law provides differently for the regulation of the manner or place of investigation into, trial or dealing in any other way with those offences".

I take cognizant note of the fact that the offences charged did not cite **section 148 (5) (a) (iv), of CAP. 20** but **29 (4) of EOCA, of which** the above is the explanation. **Section 4 (2)** responds to that and whose designation as an economic offence, the provision of **Cap. 20** still applies in absence of express provision for it to be Bailable. As observed by **Counsel Kweka** in **Rugemalira's case** it is the intention that, matters and, which the legislator meant it not bailable. In the event they wanted it to be bailable, the expressely it would have been so by deleting **section 148 (5) (a) (iv) Cap. 20.** The Court (CA) brought into light the **Anti Money Laundering Act No. 12** of **2006** widening the definition of **Money Laundering** listing 25 predicate offences.

The Preamble thereto has the following;

"An Act to make better provision for prevention and prohibition of money laundering to provide for the disclosure of information of money laundering to establish a Financial Intelligence Unit and the National Multi Disciplinary Committee on Anti Money Laundering and to provide for matters connected thereto".

In the foregoing and, considering the seriousness of offence that the Applicant carries under **count 4,** Money Laundering, notwithstanding the remaining **3 counts** that are bailable, this Court hands are tied. The Application is un-merritted and, is dismissed.

It is accordingly ordered.

J. A. De-Mello,

Judge.

2/10/2019