IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM REGISTRY)
AT DAR ES SALAAM

MISC. CRIM. APPLICATION NO. 106 OF 2019
(Arising from Economic Crime Case No. 18 of 2019 pending at Resident Magistrate Court for Dar es salaam at Kisutu)

ADAM SAID KAWAMBWA.....APPLICANT
VERSUS
THE REPUBLIC.....RESPONDENT

RULING

MASABO, J.L.:-

The Applicant through representation of Mr. Mkwikwini Robert, learned counsel filed this chamber application under section 36(1) and (5) of the Economic and Organized Crime Act, Cap. 200 R.E 2002. He preferred his application under a certificate of urgency seeking for immediate release on bail of the Applicant who has been in remand custody

According to the charge sheet annexed to the application, the Applicant stands charged at the Resident Magistrate's Court of Dar es Salaam at Kisutu of unlawful possession of government trophies c/s 86(1), (2) (ii) and (3) (b) of the Wildlife Conservation Act No. 5 of 2009 [Cap. 283) as amended by Written Laws (Miscellaneous Amendments) Act No. 4 of 2016 read together with paragraph 14 of the First schedule to the Act and the offence Money laundering pursuant to section 57(1) and 60 (2) of the Economic and Organized Crime Control Act [Cap, 200 R.E 2002) as amended by Written

Laws (Miscellaneous Amendments) Act No. 3 of 2016 having been found in unlawful possession of Government trophies to wit forty seven (47) elephant tusks worth Tshs 1, 081,357,500/= and the offence of money laundering contrary to Section 3(t) and 13(1) (a) of the Anti-Money Laundering Act No. 12of 2006 read together with paragraph 22 of the 1st Schedule to and section 57(1) and 60(2) of the Economic of the Economic and Organized Crime Control Act [Cap, 200 R.E 2002) for receiving 47 tusks while knowing that the tusks were proceeds of a predicate offence namely poaching. The application was contested by the Respondent Republic.

During the hearing Mr. Mkwikwini learned counsel represented the Applicant whereas the respondent Republic was represented by Ms. Tully Hellela learned state Attorney. In his submission Mr. Mkwikwini started by dismissing the charges of money laundering levered against the Applicant. He reasoned that the charges of money laundering have been maliciously leveled against the Applicant to deny him bail. He then proceeded to attack the charge for being defective as it does not indicate the name of the State Attorney who drafted it. He argued that section 16 of the Anti- Money laundering Act demands that a person who makes the allegation of money laundering must be named. Hence failure to indicate the name renders the charge defective. Lastly, he argued that it will be unlawful to deny the applicant bail because the DPP has not lodged any notice objecting the grant of bail to the Applicant.

On her part Ms. Helela submitted that the Applicant is charged of an offence of money laundering which according to section 48(5)(a) (iv) of the Anti-Money Laundering Act it is unbailable. In support she cited the case of James Rugemalila v R Criminal Appeal No. 291 of 2017 in which the Court of Appeal held that the offence of money laundering is unbailable. She further dismissed the complaints about charge sheet for being misconceived and irrelevant. Finally she argued that the offence of money laundering is unbailable hence it does not require any certificate.

I have considered the rival submission and the facts before me. The issue for me to determine is whether or not the Applicant qualifies to be admitted on bail. Before I delve into this issue, I would like to clarify on the issue of charge sheet and DPPs certificate. I entirely agree with the learned State Attorney that both issues are seriously misconceived. The correctness or otherwise of the charge sheet does not follow under the purview of this application as the matter is now still pending for committal in the lower court. It has been held that although this court cannot determine the correctness of the charge when the matter is pending committal before the Resident Magistrates' Court (See **James Burchard Rugemalira** (supra). The certificate of objection by DPP is issued under Section 148 (4) Criminal Procedure Act, Cap 20 RE 2002 to prevent the release of bail of the accused person who would otherwise be eligible for bail. DPP certificate is equally irrelevant in that by virtue of section 148(5)(a) (iv) of the Criminal Procedure Act t he offence of money laundering is not bailable hence it does not need to be supported by the DPP certificate.

On the merit of the application there is no dispute that the offence facing the Applicant falls in the list of non-bailable offences. The Applicant is not only aware but admitted to the fact that the offences section 148(5) (a) (v) of the Criminal Procedure Act [Cap 20 RE 2002) prohibits the grant of bail to persons charged of money laundering contrary to Anti-money Laundering Act, 2006. This is the reason the Applicant's Counsel has invited this court to declare that section 148(5) (a) (v) of the Criminal Procedure Act [Cap 20 RE 2002) is unconstitutional as it contravenes the right to liberty provided for under Article 13(6) (b) and 15 of the Constitution.

While it is true that article 13(6) (b) and 15 (1) and (2) of the Constitution are of great importance because they enshrine the fundamental right to individual liberty our statute books contains unbailable offences, the offence of money laundering being among them. The offense falling under this category ae of obviously of serios nature hence the denial of bail to persons facing charged over these offences is sanctioned. In **James Burchard Ruigemalira (supra)** the Court of Appeal of Tanzania having discussed in details the purview of the offence of money laundering it concluded that the offence of money laundering is unbailable.

In consideration the foregoing, I dismiss the application

DATED at DAR ES SALAAM this 9th day of October 2019.

J.L. MASABO

JUDGE