IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO. 87 OF 2020

(Arising from Criminal Case No. 122 of 2017 before Hon. Salum Ally SRM, Resident Magistrate's Court of Dar es Salaam at Kisutu)

REPUBLIC ..... APPLICANT

VERSUS

JOEL CHARLES RWEYENDERA
@JOEL CHARLES MACHARIA.....RESPONDENT

Date of last Order: 13/07/2020
Date of Ruling 20/07/2020

R U L I N G

MGONYA, J.

Before this Honorable Court lies an Application filed by the Applicant, after being dissatisfied by the Ruling of Kisutu Resident Magistrate's Court seeking for the following:

1. ***That, the Honourable Court be pleased to call for records of Criminal Case No. 122/2017, Resident Magistrate's Court of Dar es Salaam at Kisutu, inspect the proceedings to satisfy itself as to the correctness, legality and order of HON. SALUM ALLY SRM, and proceed to make an order to set aside the***

ruling delivered on 30/04/2020 and further order the case to proceed from where it ended;

2. ***That, the Honourable Court be pleased to make an order for the case to proceed as a normal criminal case as there is no any offence warranting it to be Economic as determined by trial Magistrate;***
3. ***That, the Honourable Court be pleased to make an order that it was wrong to invoke the provisions of Miscellaneous Amendment Act No. 3 of 2010 while the offences in the charge sheet were committed way back in 2012 before the said amendment came into force; and***
4. ***Any other order or relief(s) this honourable court may deem fit and just to grant.***

The Application before this Honoroble Court was disposed of by way of written submissions and the State Attorney for the Applicant in their submission averred that they pray for this honourable court to make an order to set aside the Ruling delivered on **30/04/2020** by Hon. Salum Ally SRM on the mentioned case and further order the case to proceed from where it ended. The Applicant made the instant prayer under Section **373 (1) (b) of the Criminal Procedure Act Cap. 20**

[R.E. 2002] whereby the court is given mandate to do the same as stated therein.

It was their view that, the said ruling was not properly made since the court had jurisdiction to entertain the matter and it had already recorded/received evidence from eleven prosecution witnesses and it was at the closure of the Prosecution case of which the court was supposed to give out the ruling of whether the accused person has a case to answer or not instead it preferred to struck out the charge sheet for the reason that it was an Economic case and not a normal criminal case as per section **16** of the **Miscellaneous Amendment Act No. 3 of 2016**, the position which was wrong.

However, the Applicant's Counsel averred that, the issue of this case being an Economic and not a normal criminal case, the honorable court was supposed to determine it from the very beginning (during admission of the charge sheet), so as to be sure if it had jurisdiction or not and not at this stage when it was expected the court to give a ruling of a case to answer or not against the accused person/Respondent.

It is the learned State Attorney's assertion that the Honorable Magistrate was wrong to rule out that ***Criminal Case No.***

122/2017 R. VS. JOEL CHARLES RWEYENDERA @ JOEL CHARLES MACHARIA was an Economic case and not a normal Criminal case by referring to **Section 16 of the Miscellaneous Amendment Act No. 3 of 2016;** the honorable Magistrate misdirect himself by citing the said law due to the fact that the offence of Money Laundering which is on count no. 4 and 5 of the charge sheet occurred in the year **2012** whereby at that time the **Miscellaneous Amendment Act No. 3 of 2016** which introduced an offence of Money Laundering to be Economic, was not in place.

It was further said that, during the commission of this offence, the said law cannot be applicable in this case. It cannot be applicable due to the well settled principle of the law that a Substantive Law cannot be applied retrospectively. By saying so it means that the law will apply from the date of its publication onwards and not backwards.

In their submission the Applicant contended that the Court should consider **Section 14 of the Interpretation of the Laws Act Cap. 1 [R.E. 2002]**, where by the said section categorically states as follows:

"Every Act shall come into operation on the date of its publication in the Gazette or, if it is provided either in that Act or any other written law, that it shall come into operation on the same other date, on that date".

It was also averred in the Applicant's submission that, apart from the said law, they also have a number of court decisions which basically provides a stand on the retrospectively application of the law and the case of ***LALA WINO Vs. KARATU DISTRICT COUNCIL, CIVIL APPLICATION NO. 132/2018 CAT at ARUSHA*** was cited in support of their argument and reference to the case of ***MUNICIPALITY OF MOMBASA Vs. NYALI LTD (1963) EA*** where the Court put it clear that:

"Whether or not legislation operates retrospectively depend on the intention of the enacting body as manifested by legislation. In seeking to ascertain the intention behind the legislation the courts are guided by certain rules of construction. One of these rules is that if the legislation affects substantive rights it will not be

construed to have a retrospective operation unless a clear intention to that effect is manifested; where as if it affects procedure only, prima facie it operates retrospectively unless there is good reason to the contrary."

It is from the State Attorney's submission that this quotation by the court gives out a clear explanation on the retrospectively application of the law whereby it is stated that it can only be applicable in the **Procedural Law** and not in **Substantive Law.** It is the same issue of the retrospective application of the law was also discussed in the case of ***JOVET TANZANIA LIMITED Vs BAVARIA N.V., Civil Application No. 2017 of 2018 CAT at Dar es Salaam at Page 9-12.*** In this case the court referred also to the case of ***MUNICIPALITY OF MOMBASA Vs NYALI LTD (1963) EA 371, at 374.***

Moreover it was submitted that, in discussing the issue of retrospectively application of the law, the position was the same as discussed in the previous mentioned case considering this matter, no doubt that the **Anti-Money Laundering Act Cap. 423 [R.E. 2002]** that governs an offence of Money Laundering is a Substantive Law and not a Procedural Law. Being a Substantive Law it cannot be applied retrospectively as per the

court of appeal decision in the previous discussed cases. That being the case, the Magistrate is said to have misdirected himself by applying **Section 16 of the Miscellaneous Amendment Act No. 3 of 2016** to an offence of Money Laundering which was committed in the year 2012 as explained in the charge sheet at **4th** and **5th** counts.

It was the Applicant's view of the foregoing that by considering Section **14 of the Interpretation of the Laws Act Cap 1 [R.E. 2002]** (now R.E. 2019) in this matter it means that **Section 16 of the Miscellaneous Amendment Act No. 3 of 2016** can only be applied to the offence of Money Laundering which has been committed from the year 2016 onwards, hence it was wrong to apply this law to an offence of Money Laundering which was committed in the year 2012. It was wrong due to the fact that the time said offence was committed the **Miscellaneous Amendment Act No. 3 of 2016 was not in existence.**

It was the averment in the submission by the Applicant that there was another law which governed the offence of Money Laundering at that time which is The **Anti-Money Laundering Act Cap. 423 [R.E. 2002]**, hence this was the proper Law to be applicable for the offence of Money Laundering which was

committed at that time that is the **year 2012** before amendment of the said law in the **year 2016**.

It was the Applicant's conclusion that, based on the above submission that the application be considered for the reasons that there has been advance reasonable grounds in the instant submission, as the grant of the Applicant's prayers in this application is very essential since it will assist the court to decide the matter on merit and not merely on technicalities to meet the ends of justice.

In reply to the Applicant's submission, it was the Respondent's Counsel averment that, since the accused person, in his written submission has raised the issue of combination of economic and non-economic offences in one charge sheet; and since the prosecution, despite having ample time reading of thier written submissions, did not dispute or controvert the said issue in their written submission; and since that it was wrong for the Prosecution to combine economic and non-economic offences in one charge sheet, such finding of the trial court constitutes issue of Estoppel against the Prosecution.

Moreover, the Respondent's Counsel is of the view that, the Prosecution is estopped to re-open it by way of revision in this

Court between the same parties; regardless of the correctness or incorrectness of the said finding of the trial court which amounts to issue estoppel. Finding of the trial court and is precluded from taking any step to challenge it in this Court by way of revision. In quest of supporting their argument the case of ***ISSA ATHUMAN TOJO VS. THE REPUBLIC, CRIMINAL APPEAL No. 54 of 1996*** was cited to support the same.

Further, Counsel for the Respondent averred that, they partly support the analysis and finding of the trial Court that the charge sheet is incurably defective for combining both economic and non-economic offences, hence the trial court lacks jurisdiction to try and determine the same without the sanction of the Director of Public Prosecution and therefore it is their emphasis that they reiterate and adopt their Written Submission they made in the trial Court on no case to answer.

It is the Respondent's counsel assertion that, the written submission in the trial court, at the time the accused person was charged on 16th March, 2017, the offence of money laundering under **section 12 (d) of the Anti-Money Laundering Act, Cap. 423 of 2006, as amended by Act No. 1 offences in paragraph 22 of the First Schedule to the Economic and Organized Crime Control Act, Cap. 200 as amended by**

section 16 of the Written Laws (Miscellaneous Amendments) Act, Act No. 3 of 2016. Their submission on this aspect was not disputed or controverted by the Prosecution in their written reply submission.

Further, it is in the Respondents submission that, ***section 12 (d) of the Anti-Money Laundering Act, Cap. 423 of 2006,*** as ***amended by Act No. 1 of 2012*** must be read together with **paragraph 22 of the first Schedule to the Economic and Organized Crime Control Act, Cap. 200** as amended by **section 16 of the Written Laws (Miscellaneous Amendments) Economic and Organized Crime Control Act, Cap. 200.**

It is the Respondent's Counsel assertion that, **PART III of *the Written Laws (Miscellaneous Amendments) Act, Act No. 3 of 2016 is entitled; "AMENDMENT OF THE ECONOMIC AND ORGANISED CRIME CONTROL ACT, (CAP. 200). Section 5 of the said the Written Laws (Miscellaneous Amendments) Act, Act No. 3 of 2016*** provides that:

> ***"5. <u>This part shall be read as on with Economic and Organized Crime Control Act,</u> hereinafter***

referred to as the "Principal Act". (Emphasis added)

Further, that Paragraph 22 of the First Schedule to the Economic and Organized Crime Control Act, Cap. 200 as amended by **section 16 of Written Laws (Miscellaneous Amendments) Act, Act. 3 of 2016 (annexed to their submissions)** lists offences ***under section 12, 17 and 20 of the Anti-Money Laundering Act, Cap. 423*** of as economic offences. It provides:

> ***"22. A person is guilty of an offence under this paragraph who commits an offence under section 12, 17 or 20 of the Anti-Money Laundering Act." (Bolding added)***

Further, Section 12 (d) of the ***Anti-Money Laundering Act, Cap. 423 of 2006*** was brought into the court's attention which provides:

> *"12.A person who –*
>
> *(d) acquires, possesses, uses or administers property, while he knows or ought to know or ought to have known at the time of receipt that such property is the*

proceeds of a predicate offence, ***commits offence of money laundering."***

Together with it section 57 (1) and (2) of the Economic and Organised Crime Control Act, Cap. 200 which provides:

"57. – *(1)* ***with effect from the 25th day of September, 1984, the offences prescribed in the first schedule to this act shall be known as economic offences and triable by the Court in accordance with the provisions of this Act.***

(2) The Minister may, by order published in the Gazette, and with the prior approval by resolution of the National Assembly, amend or otherwise alter the first schedule to this Act but no offence shall be removed from the first schedule under section except by an Act of Parliament."

It is the Respondent's Counsel submission at this juncture that, it is clear from the above quoted provisions of the laws that all offences prescribed in the first schedule to the **Economic and Organized Crime Control Act, Cap. 200,** whether amended/altered or not, are known as Economic Offences and

take effect retrospectively from the **25th day of September, 1984.**

After carefully considering the competing arguments of the Learned State Attorney and Counsel for the Respondent, I propose to tackle the Application from here as follows.

It is evident that the charge as attached to the Applicants application contains within nine (9) counts of which two being the **4th and 5th** count are charges of **Money Laundering** offences and it is from this stance the Ruling delivered is being objected by the Republic.

Money Laundering Offences of which the Respondent was charged with, were footed from the provisions of ***Section 3(1), 12 (d) and 13 (1) (a) of the Anti-Money Laundering Act Cap. 423 of 2006 as amended by Act No. 1 of 2012***. It is from the Charge that entails the offences by the Respondent were committed in the year ***2011*** and ***2012***.

Thus, it is from the above that the Hon. Magistrate aligned with the closing submission of Counsel of the accused that the Charge contains a combination of Charges being non-economic and economic offenses and ruled out that the charge is incorrect

in that manner and hence strucked out the entire Charge sheet with all nine Counts.

As repeatedly in the submission by the Applicant, the main complaint is that the offence under the 4th and 5th Counts of the Charge against the present Respondent are non-economic for when the offences were committed the amendment of **2016** had not come to place while the Respondent states that the above named amendment affects the charge.

In such circumstances it has to be first known that normally newly amended acts enacted are not required to act **retrospective** except where such enactment provides so. It was clearly settled under ***Section 14 of the Interpretation of Laws Act Cap. 1, [R.E. 2002],*** which provides that:

However, the concept of a newly enacted Act does not only end under the interpretation of ***Section 14 of the Interpretation of Laws Act (Supra)*** but further extends to the principle of a law being **Substantive** or **Procedural**. This whole principle was well expounded in the case of ***THE DIRECTOR OF PUBLIC PROSECUTION VS JACKSON SIFAEL MTARES and 3 OTHERS, Cr. Appeal No.2 of 2018, MILLA J. at pg. 28 to 30.***

Taking into account of our circumstance at hand, the Respondent was accused under the ***Anti-Money Laundering Act Cap. 423 of 2006 [R.E. 2012]*** of which is a **Substantive Law** a fact that I find no doubt in it. Therefore, being a **Substantive Law** the **Amendment of Act No. 3 of 2016**; the Magistrate from this point of view, misdirected himself to have strike out the entire Charge Sheet before the Court.

Further, I am inclined to also take into account the act by the Hon. Magistrate of being in a position to rule out on no case to answer but opted to rule out on matter that had not been argued upon. It is the practice and procedure in the Courts of law that when a matter comes into Judge's or Magistrate's knowledge it has first to be addressed and parties be given an opportunity to address the court upon such matter or issue before a ruling is made against such an issue.

Having proceeded to deliver such ruling it appears that the issue ruled upon by the Magistrate was prematurely and hence the same ought to be another reason to allow this application.

It is from the above, that I **allow this Application and proceed to order that the matter be remitted to the trial Court for the trial Magistrate to proceed from where it**

had ended; and particularly to write Ruling on whether the Accused has a case to answer or not.

It is so ordered.

L. E. MGONYA
JUDGE
20/07/2020

Court: Judgment delivered in chamber in the presence of Ms. Faraja George, State Attorney for the Applicant, Dr. Lucas Kamalija, Advocate for the Respondent and Ms. Veronica RMA this 20th day of July, 2020.

L. E. MGONYA
JUDGE
20/07/2020