

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. CRIMINAL APPLICATION No. 33 OF 2020

(BAIL APPLICATION)

(ARISING FROM RM. ECO CASE No. 09 OF 2020)

PENGFEI S/O YE AND OTHERSAPPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

13th & 15th July, 2020

TIGANGA, J.

Before me is an application for bail made by the pplicant, through the service of Mr. Rweyemamu, learned counsel for the applicant.

The application was filed under the certificate of urgency by a chamber summons filed under Section 29 (4) (d) and 36 (1) of the Economic and Organised Crime Control Act, as amended and any other enabling provision of the law.

It was supported by an affidavit sworn by one Emmanuel Tamila Makene, an Advocate of the High Court and courts subordinated thereto

save for Primary Court in which, the historical back ground of the application was narrated together with the ground of application.

In the chambers summons two main orders are sought namely;

- i. That the honourable court be pleased to grant bail to the applicants on condition it may deem fit pending trial of Economic Crime Case No. 09/2020 in the court of Resident Magistrate of Mwanza at Mwanza.
- ii. Any other relief this court may deem fit and / or just to grant to the applicant.

The brief background of the matter is that, the four applicants are facing an Economic crime charges before the court of Resident Magistrate of Mwanza Economic Case No. 09/2020.

In that case, they are facing five counts. Out of five counts three have been preferred under the Economic and Organised Crime Control Act [Cap 200 R.E 2019] while the rest two counts were preferred under the Penal Code.

Those preferred as economic offences are in the 1st, 2nd and 4th counts, which basically are offences of leading organised crime and hoarding of money. While those under the Penal Code are, clipping moneys contrary to section 356 of the Penal Code as charged in the 3rd and 5th counts.

For obvious legal reasons that the charges involves the properties exceeding Tshs. 10,000,000/= (ten millions) the subordinate court before

which these charges are preferred has no jurisdiction to entertain the bail application, that is the reasons the application before the High Court.

When the application was served to the respondent the Republic, they objected it by filing two documents, namely the counter affidavit sworn and filed by Miss. Magreth Benard Mwaseba, State Attorney, while the second document being the certificate of the Director of Public Prosecutions filed under section 36 (2) of the Economic and Organised Crimes Control Act [Cap 200 R.E 2019], in which Biswalo Eutropius Kachele Mganga - Director of Public Prosecutions on behalf of the Republic in which he certified that, the applicants who are accused before the court of Resident Magistrate in Economic Case No. 09/2020 should not be granted bail on the ground that, if bail is granted the safety and interests of the Republic will be prejudiced.

When the application was called for hearing, the counsel for the respondent Miss. Magreth Mwaseba learned State Attorney informed the court that the Director of Public Prosecution had filed a certificate objecting bail under section 36 of the Economic and Organised Crimes Control Act (supra).

He informed the court that under that law, once the certificate under that provision has been filed by the Director of Public Prosecutions then the court cease to have jurisdiction to grant bail.

To support her argument she cited the authority in the decision of the Court of Appeal in the case of the **Director of Public Prosecutions vs Li Ling Ling**, Criminal Appeal No. 508 of 2015 CAT- Dar es Salaam (unreported) in which it was held *inter alia* that once the DPP has certified

in writing and filed a certificate to the effect that the safety or interests of the United Republic are likely to be prejudiced by granting bail in the case and, the certificate must relate to a criminal case either pending trial or pending appeal.

She submitted that the certificate filed by the DPP in this case on 08/07/2020 have met the above elucidated criteria. She submitted therefore that, by the DPP filing the certificate the powers of this court to grant bail is fettered.

In his reply Mr. Rweyemamu submitted that in his understanding the application he filed was supposed to be countered by the counter affidavit, and that if a certificate, then the same was supposed to be annexed with the counter affidavit. According to him, filing the counter affidavit in separation is tantamount to non filing. Therefore he objected the application as it has not been properly filed, and so it does not form and so it does not form the court record. He prayed the court to disregard the said certificate and proceed to determine the application for bail.

In rejoinder Miss. Mwaseba submitted that Section 36 (2) requires the DPP to file the certificate to object the application that provision does not talk about annexing the said certificate to any other document. She submitted that the DPP filed the certificate as required by law, and has complied with the conditions laid out in the case cited above in the submission in chief, she therefore prayed that the certificate be accepted and bail be denied.

That was all about what the documents filed and what the parties submitted during the hearing viva voce. From the materials summarised above, I find two issues for determination, namely;

- a) Whether there is a certificate has been properly filed by the Director of Public Prosecutions in the record of the court.
- b) If the first issue is resolved in affirmative, whether the filed certificate bars the court to grant bail to the applicants.

In resolving the first issue as to whether there is a certificate properly filed by the DPP in the records of the court? This issue emanates from the submission by the counsel for the applicant who submitted that for the certificate to be validly filed it must be pleaded in the affidavit, or counter affidavit and annexed to the said counter affidavit.

To resolve this issue, it is important to have a look into the provision of the law upon which the certificate has been filed, Section 36 (2) which provides;

"Notwithstanding anything in this section contained, no person shall be admitted to bail pending trial, if the Director of Public Prosecutions certifies that it is likely that the safety or interests of the Republic would thereby be prejudiced"

Under this law, the Director of Public Prosecutions is required to certify, which by plain meaning, certifying means filing a certificate. Further to that, in the authority of the **DPP vs Li Ling Ling** (supra). It was held at page 13 that section 36 (2) Economic and Organised Crimes Control Act, (supra) should be read together with subsection (7) of the same section which provide that;

"For the purpose of this Section the "court" includes every court which has jurisdiction to hear a petition for and grant bail to a person under charges triable or being tried under this act"

After quoting above two provisions the court went ahead and held *inter alia* that;

*"By operation of the above quoted provision, the condition under Section 36 (2) of the Act applied to every court which has jurisdiction to entertain and grant bail in Economic crime cases. **This means the DPP is empowered to file a certificate in any court which has jurisdiction to hear and determine an application for bail, be it the subordinate court, the High court or the Economic crime court**" (Emphasis supplied).*

From above authority, it goes without saying that the DPP is empowered to file a **certificate**, the law does not say that the certificate must be an annexure to any other document. That being the position of the law, it suffices to find that the first issue is hereby resolved in affirmative, the certificate filed on 08/07/2020 by the Director of Public Prosecutions objecting bail of the applicants was properly filed and forms part of the record of the court.

Having resolved that issue in affirmative the second issue is whether the filed certificate bares the court to grant bail to the applicants.

In the same case of **DPP vs Li Ling Ling** (supra) at page 15, the authority in the case of **DPP vs Ally Nuru Dirie and Another**, [1988] TLR 252 CA, was quoted in approval, when it was held *inter alia* that;

"The position of the law as stated in the **Dirie's case** is that once the DPP's certificate has met a validity test, the court shall not grant bail. The conditions of validity of DPP's certificate as stated in that case are the following;

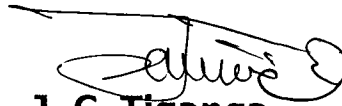
- i. The DPP must certify in writing, and
- ii. The certificate must be to the effect that the safety or interest of the United Republic are likely to be prejudiced by granting bail in the case, and
- iii. The certificate must relate to a criminal case either pending trial or pending appeal.

In this case /application, the DPP filed a certificate, it means he has certified in writings. The certificate has pointed out that the safety and interest of the Republic are likely to be prejudiced by granting bail in the case facing the applicants, and the certificate has made reference Economic Case No. 09/2020 before the court of Resident Magistrate, pending committal and then trial. That being the position then, it goes without saying that, the certificate has passed the validity test.

Therefore in the line of the authorities in **DPP Vs Li Ling Ling** and **DPP Vs Ally Nuru Dirie** (supra) the bail cannot be granted. The Application is therefore refused for the reasons given.

It is so ordered.

DATED at MWANZA, this 15th day of July, 2020



J. C. Tiganga

Judge

15/07/2020

Ruling delivered in the presence of Mr. Rweyemamu learned counsel for the applicants and Miss Magreth Mwaseba, State Attorney for the respondent Republic.



J. C. Tiganga

Judge

15/07/2020