IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO 30 OF 2020

(Originating from Economic Crimes Case No 05 of 2019 before the High Court Corruption and Economic Crimes Division)

ALLOYCIOUS S/O GONZAGA MADAGO.....1ST APPLICANT

ISAACK S/O WILFRED KASANGA.....2ND APPLICANT

VERSUS

THE REPUBLIC .....RESPONDENT

RULING

MASABO, J.

Before me is an application for bail. The Applicants are praying that they be granted bail pending trial in the Economic Case No. 5 of 2019 before the High Court Corruption and Economic Crimes Division. In this case the Applicants are charged with several offences, including conspiracy contrary to section 384 of the Penal Code [Cap 16 RE 2002] (hereafter, the Penal Code) Forgery contrary to sections 333, 335 (a) and 337 of the Penal Code; Uttering false documents contrary to sections 342 and 337 of the penal Code; carrying on business without holding a valid business licence contrary to sections 3(1) (a) and 19 (1) (a) (i) of the Business Licencing Act, Cap 208 RE 2002; making false statement contrary to sections 106 (1) (d) (i) of the Income Tax Act , No. 11 of 2004, money laundering contrary to section 12 (d) and 13 (a) of the Anti-Money Laundering Act, No 12 of 2006 and

Occasioning loss to a specified authority contrary to paragraph 10(1) of the 1st schedule to, and Sections 57(1) and 60(2) of the Economic and Organised Crimes Control Act [Cap 200 Re 2002].

The application for bail was made by way of chamber summons supported by a joint affidavit sworn by the applicants which was contested by the Respondent Republic in a counter affidavit deponed by Ladislaus Komanya, learned Senior State Attorney. In addition, the Respondent Republic filed a notice of preliminary objection on a point of law to the effect that:

i. this court has no jurisdiction to entertain the application; and
ii. the application is untenable in law.

The preliminary objection was heard in writing. The applicants appeared in person. Mr. Ladislaus Komaya, Senior State Attorney appeared for the Respondent Republic.

Submitting in support of the first limb of the preliminary objection Mr. Komanya argued that the application has been wrongly preferred under section 29(4) (d) and 36(1) of the Economic and Organised Crimes Control Cap 200 RE 2019 because these provisions apply only to economic offences whereas the offences against which the applicants are charged were committed between March 2010 and April 2016 when the offence of money laundering was not categorized as an economic offence.

In the alternative, he argued that, the offence of money laundering for which the applicants are charged is not bailable as per section 148(5) (a) (v) of the Criminal Procedure Act [Cap 20 RE 2019].

Mr. Komanya argued further that, the application was wrongly lodged in this court as it ought to have been lodged in the trial court which is vested with full jurisdiction to grant bail. He reasoned that, the jurisdiction of this court in granting bail under section 29(4) (d) of Cap 200 is only applicable prior to commencement of trial- during committal proceedings. Once trial has commenced, the jurisdiction to grant bail vests in the trial court. Thus, since trial has commenced and is now pending before the High Court - Corruption and Economic Crimes Division; this court cannot entertain the application as the powers to grant bail has vested in the trial court pursuant to section 29(4) (c) of Cap 200. The case of **Director of Public Prosecutions V Aneth Makame** Criminal Appeal No. 127 of 2018 CAT (Unreported) and **James Burchard Rugemarila v The Republic** Criminal Appeal No 391 of 2017 CAT (unreported).

In reply the Applicants argued that, the application is properly before this court as it is covered by Section 36(7) of Cap 200. They argued that, pursuant to this section, since the applicants are charged with an Economic Case No. 5 of 2019, they are eligible for grant of bail by this court. They argued further that, the fact that the DPP has filed a certificate under section 12(3) and (4) of the Cap 200 for trial to be instituted in the Corruption and Economic Division of this court it does not oust the jurisdiction of this registry or other registry of the High Court to deal with bail applications because section 36(7) of the same Act is permissive as per the holding of the Court of Appeal in **Director of Public Prosecutions v Aneth Makame** (supra). They argued further that, although section 36(7) is not specifically

mentioned in the chamber summons, it is applicable and is covered in the phrase "any other enabling provision of law".

On the second limb, the applicants argued forcefully that, according to section 57(1) of Cap 200 the offence of money laundering is an economic offence and falls under the purview of Cap 200. The applicants argued further that bail is constitutional right, therefore, this court being the organ vested with adjudicatory role it has duty to determine the application without being bound by technicalities. Besides, they argued that, the offence of money laundering although not bailable under the Criminal Procedure Act, Cap 20 RE 2019 it is bailable under Cap 200. Hence, the submission that the offence is unbailable is without merit.

In rejoinder, the learned Senior State Attorney submitted that the instant bail application is an abuse of court process because trial has already commenced in the court dully vested with competent jurisdiction to hear and determine their application. He argued that section 36(7) of the Economic Organized Crime Control Act should not be construed in isolation. It should be construed with Section 3(1) and (3) of Act No 3 of 2016 which amended the parent Act by introducing the Corruption and Economic Division of the High Court. Therefore, section 29 (4) (c) of Cap 200 is applicable as opposed to section 29 (4) (d) of the same Act.

In regard of the 2nd limb of the applicants' arguments, Mr. Komanya rejoined that, although the applicants allegedly committed the offence of money laundering between March 2010 and April 2016 when the offence of money laundering was yet to be categorized as economic offence, the same was

already categorized as a non bailable offence pursuant to section 148(5)(a)(v) of Criminal Procedure Act, Cap 20 RE 2019.

I have carefully considered the submissions from both parties. This court is to determine two issues, namely: **First,** whether the offences facing the applicants are economic offences and if so, whether this court is vested with jurisdiction to entertain the instant application and, **Second** whether the offence of money laundering is bailable.

With regard to the 1st issues, having scrutinized the charge sheet, I have found that the concerns raised by both parties are valid. The applicants herein stand charged of a mixture of normal offences and economic offences. Save for the 39th count on the offence of occasioning loss to specified authority contrary to s. 57(1) and 60 (2) of Cap 200, most of the charges fall outside the scope of Cap 200 (and this include the offence of money laundering for obvious reasons that at the commission of the offence it was not categorized as economic offence). In my settled view, since one of the offences facing the applicant falls under the scope of Cap 200 which provides for a special procedure for bail, the applicants cannot be faulted for preferring their application under Cap 200 as they could not have filed two subsequent applications for bail. Whether or not they have been wrongly charged under count 39 is not a matter for determination in this application.

The procedure for granting bail under Cap 200 is articulated under section 29 (4) (d) of Cap 200 which provides that:

29 (4) After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purposes of this section the power to hear bail applications and grant bail-

(d) in all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court [Emphasis added]

Section 29(4)(d) is only applicable where the offences against which the applicant stands charged is involves property worth Tshs 10 million or above. The Court of Appeal while interpreting the application of this provision in **Aneth John Makame v. R** Criminal Appeal No. 127 of 2018, Court of Appeal at Dar es Salaam (unreported) held that

> "Reverting to section 29(4) (d) of the EOCCA the situation before and after the amendments vide Act No. 3 of 2016, the High Court had been vested with jurisdiction to hear and determine an application for bail in all cases where the value of any property involved in the offence charged is ten million shillings or more."

In the instant application, it is undisputed that that the offences facing the applicant involve a sum of amount which is far above the 10 million threshold. Among others, in count no. 26, they are jointly charged of laundering Two Billion Nine Hundred Sixty-Seven Million Nine Hundred Fifty-Nine Thousand Five Hundred Fifty-Four Shillings (Tshs 2, 967,959,554/).

Therefore, in the light of the authority of the Court of Appeal in **Aneth John Makame v. R** (supra), this court is vested with jurisdiction to entertain the application. Under the premise, the first objection is overruled.

Regarding the second preliminary objection, it is an undisputable fact that one of the offences facing the applicants is the offence of money laundering. Ther issue to be determined is whether this offence is bailable or not. The applicants have forcefully argued that there is a conflict of law which should be interpreted in their favour. It was argued that the conflict rests on the point that the offence of money laundering is an economic offence provided for under the Economic and Organised Crime Control Act [Cap 200 RE 2019] and according to section 36 of this Act, the offence of money laundering is bailable. On the other side of the coin is section148(5)(v) of the Criminal Procedure Act, Cap 20 RE 2019 which categorically states that the offence of money laundering is unbailable.

Let me say straight away that this issue will not detain me as it is not an alien subject. It has been extensively considered and determined by this Court and the Court of Appeal of Tanzania. The position of law is now is settled that although Cap 200 does not categorically cluster the offence of money laundering as a non-bailable offence, the same is non bailable under section 148 (5) (v) of the Criminal Procedure Code, [Cap R.E 2019]. Therefore, since the applicants are facing charges of money laundering, they are ineligible for bail.

In **James Burchard Rugemarila v The Republic** Criminal Appeal No 391 of 2017 CAT (unreported), the Court of Appeal having discussed the

evolution of the offence of money laundering in our jurisdiction and its status under Cap 200 and the Criminal Procedure Act, it held that:

> "In view of the above, we accept Mr. Nchimbi's argument that money laundering is a serious offence, and that in not expressly providing that the offence is not bailable, Parliament could not have intended it to be bailable. We do not share with Mr. Kamala the view that the omission to categorically specify money laundering as non bailable should be interpreted in favour of the appellant. We say so because Section 148(5)(a)(iv) of the CPA has not been amended to remove money laundering from the list of non-bailable offence.

This is the position of the law as it currently stands. The second point of the preliminary objection raised by the Respondent is therefore meritorious.

Accordingly, I uphold it and strike out the application for incompetence.

DATED at **DAR ES SALAAM** this 26th day of August 2020.

THE HIGH COURT OF TANZANIA

J.L. MASABO

JUDGE