

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA DISTRICT REGISTRY)**

AT IRINGA

(APPELLATE JURISDICTION)

MISC. ECONOMIC APPEAL NO. 34 OF 2019

*(Originating from Iringa Resident Magistrate Court
Economic Criminal Case No. 12 of 2018)*

TONY VITUS ERICK APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

Date of Last Order: 23/03/2020

Date of Ruling: 30/03/2020

RULING

MATOGOLO, J.

This is a second ruling in respect of this application for bail. The applicant one Tonny Vitus Erick who is arraigned before the court of Resident Magistrate Iringa in Economic Crime Case No. 12 of 2018, along with ten others he may feel himself unprivileged after every attempt to get out of the prison bars on bail has hit a snag.

Their first attempt in Miscellaneous Economic Cause No. 28 of 2018 filed in the Corruption and Economic Crime Division of the High Court was

not successful as the Director of Public Prosecutor filed a certificate under Section 36(2) of the Economic and Organized Crime Act.

According to the applicant, they appealed to the Court of Appeal but later they decided to withdrawn their appeal following the decision on of the Court of Appeal. The applicant might be referring to Criminal Appeal No 127 of 2018 ***The Director of Public Prosecutor vs. Aneth John Makame*** in which the Court decided that the Corruption and Economic Crime Division has no jurisdiction for matters whose value is below one billion shillings. The applicant filed this application but the Republic raised an objection that the Director of Public Prosecutor had fixed a certificate in Miscellaneous Economic Cause No. 28 of 2018 which he has not withdrawn it. However I overruled the objection on ground that the said certificate was fixed in the Corruption and Economic Crime Division of the High Court and not in this Court or in the Court of Resident Magistrate where the case against the applicant and co- accused persons is still pending.

Following that ruling of 27/11/2019 the Director of Public Prosecutor filed a certificate to this court in respect of this application. The certificate is dated 29th November, 2019 and was filed in court on 03/12/2019 seven days after the ruling. The application was fixed for hearing on 23/03/2020.

On that date Mr. Alex Mwita learned State Attorney who appeared for the Respondent Republic informed this court on the presence of the

Director of Public Prosecutor certificate and he submitted that basing on that certificate this court cannot proceed and determine the application.

The applicant who appeared in person and being a layperson could not offer meaningful response than complaining that the Director of Public Prosecutor intention is to deny him his legal right. As the Republic made a mistake for the first time it should not be given opportunity to rectify that mistake. He therefore prayed to this court to disregard the certificate and grant him bail.

In rejoinder Mr. Alex Mwita submitted that there is no any other certificate by the Director of Public Prosecutor filed in this application. It is only the present which was filed in respect of Economic Crime Case No. 12 of 2018 pending in the Court of Resident Magistrate. He said the present certificate is valid.

Mr. Alex Mwita learned State Attorney submitted further that even if there was a previous certificate filed in court and found invalid, there is no law prohibiting the Director of Public Prosecutor to file another valid certificate denying bail to an accused person.

The question for determination is whether the present certificate filed by the Director of Public Prosecutor is valid one and if so what is its effect in the present application.

Section 36(2) under which the certificate was made 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 interest of the Republic would thereby be prejudiced"

Subsection (3) provides:-

"A certificate issued by the Director of Public Prosecutions under subsection (2) shall take effect from the date it is fixed in court or notified to the officer incharge of a police station, and shall remain in effect until the proceedings concerned are concluded or the Director of Public Prosecutions withdraws it".

It was correctly pointed out by Me. Alex Mwita learned State Attorney that there has been no any other certificate by the Director of Public Prosecutor filed in respect of this application. The previous certificate referred by the Republic was that filed in Miscellaneous Economic Cause No. 28 of 2018.

The certificate under consideration as I have stated above was filed on 03/12/2019. The only question for this court to consider is whether this

certificate is valid one. The issue of validity of the Director of Public Prosecutors certificate was discussed in the case of ***The DPP. vs. Ally Nur Dirie and Another [1988] TLR 252*** in which the Court of Appeal laid down three conditions for the certificate to be valid, these are:-

- (i) *The Director of Public Prosecution must certify in writing.*
- (ii) *The certificate must be to the effect that the safety or interests 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 in trial or pending appeal.*

The other condition was added in the case of ***Emmanuel Simphorian Massawe***, Criminal Appeal No. 252 of 2016, that is in filing the certificate, the DPP must do so with good faith. In his submission the applicant complained that the DPP has intended to deny him bail impliedly that he filed the certificate with bad faith. But bad faith can be proved where there is evidence by the one who alleges that, proving the same. But at this stage, there is no any evidence availed to this court of bad faith on part of the DPP. in filing the certificate in question.

Now looking at the certificate at hand the same is in writing, it certifies that Tonny s/o Vitus Erick who is an accused person in Economic Crimes case No. 12 of 2018 and the applicant in this application should not be granted bail on the ground that the interest of the Republic will be prejudiced. As pointed out in the certificate itself it is in respect of the

applicant who is charged in Economic Crime Case No. 12 of 2018 which is the Criminal Offence which is still pending trial in the District Court of Iringa.

The three conditions set in ***Ally Nur Dirie Case*** were met. The next question therefore is, given that position will this court continue to determine the applicant's application for bail?. The answer is provided in the decision of the Court of Appeal in ***The DPP. vs. Li Ling Ling***, Criminal Appeal No. 508 of 2015 which sat at Dar es Salaam in which it was held at page 15 that:-

*".....the position of the law as stated in the
Dirie Case is that once The Director of Public
Prosecutions certificate has met a validity test
the court shall not grant bail"*

With such decision of the Court of Appeal this court cannot proceed to hearing the application and grant bail to the applicant. This court is bound to follow the decision of the Court of Appeal regardless of its correctness as it was held in the case of ***Jumuiya ya Wafanyakazi Tanzania vs. Kiwanda cha Uchapaji cha Taifa [1988] TLR 146.***

With the above cited authorities this court cannot do otherwise but to follow what the Court of Appeal has instructed. On the basis the Director of Public Prosecutor certificate will remain in force until when the same will be

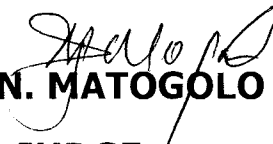

F. N. MATOGOLO
JUDGE

30/03/2020

COURT:

Ruling delivered this 30th day of March, 2020 in the presence of the applicant and Mr. Adolf Maganda learned Senior State Attorney for the Republic.




F.N. MATOGOLO
JUDGE
30/3/2020.