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

MISC. CRIMINAL APPLICATION NO 140 OF 2020

KHAIROON INDERJEET JANDU----------1ST APPLICANT

MOHAMED MAJALIWA----------2ND APPLICANT

IBRAHIM S. SNAGAWE----------3RD APPLICANT

ZAINABU YUNUS ISMAIL THARIA----------4TH APPLICANT

VERSUS

THE REPUBLIC----------RESPONDENT

RULING

Date of last order: 17th September,2020
Date of ruling: 1st October,2020

MLYAMBINA, J.

The Applicants are being charged with the offence of leading organized crime (1st count), forgery (for 2nd, 3rd, 4th and 5th counts) for 1st, 2nd and 3rd Applicants, uttering false documents (6th, 7th and 8th counts) in respect of the 1st applicant only, stealing and money laundering (9th and 11th counts) and the 3rd applicant is charged with the count of neglect to prevent offence (10th count). It is Economic Crime Case No. 54 of 2020 at the Resident Magistrate's Court of Dar es Salaam at Kisutu.

Before this court, the Applicants are seeking for bail pending determination of the original case before the trial Court. The application has been made under the provisions of **Section 29 (4) (d) of the Economic and Organized Crimes Control Act Cap. 200 (R. E. 2019)**. The application is being supported with the affidavit of learned Counsel Nehemiah Geofrey Nkoko.

The Respondent in reply resisted the application by filing a counter affidavit sworn by Genes Tesha, a Senior State Attorney and raised a *plea in limine litis* centre of this ruling. According to Mr. Tesha, one of the offences the Applicants are being charged with is not bailable.

It was submitted by Mr. Tesha that all Applicants are being charged with the offence of money laundering under count 11 which is not bailable under *Section 148 (5) (v) of the Criminal Procedure Act Cap 20 (R.E. 2019).* Thus, even if other charges against the Applicants are bailable, having one unbailable offence, the law does not allow bail to the Applicants. Mr. Tesha therefore prayed the application not be granted for the reason that the law does not allow bail.

In response, Counsel Nehemia Nkoko submitted that the 11th count of which the Respondent alleges that is unbailable, has been brought under *Section 29 (4) (d) of the Economic and Crimes Control Act (supra).* It is not a nominal criminal case. In view of Counsel

Nehemia Nkoko, *the Economic Crime Case No. 54 of 2020* which is pending before the Kisutu RMs Court is bailable under *Section 29 (4) (d) read together with Section 36 of the Economic and Crimes Control Act (supra).*

It was the submission of Counsel Nehemia Nkoko *that Section 148 of the Criminal Procedure Act* is no more useful in *Economic and Crimes Control Act*. The reason advanced by Nehemia Nkoko was that in terms of *Section 4(2) of the Criminal Procedure Act*, if there are other laws which provides differently for the regulation of the manner or place of investigation into trial or dealing in any other way with those offences, the procedure under the Criminal Procedure Act do not apply. To buttress the position, Counsel Nehemia Nkoko cited the case of **Edward D. Kambuga and Another v. Republic** 1990 TLR 84 in which the Court of Appeal held:

(i) The learned Judge was correct in using the powers to grant bail under Section 29 against the mandatory condition stipulated under Section 35 which is now Section 36.

(ii) As the procedure for granting bail is fully provided for in the Economic Crimes and Control Act, the procedure under the Criminal Procedure Act do not apply.

Counsel Nehemia Nkoko went on to cite the case of **James Burchard Rugemalira v. Republic**, Criminal Appeal No. 391 of 2017 Court of Appeal of Tanzania at Dar es Salaam in which the Court discussed the applicability of *Section 4 (2) of the Criminal Procedure Act* when the applicant is being charged on Economic Crimes. The Court concluded at page 28:

> *We also note that the application before the High Court cited Section 148 (1) and (5) of the Criminal Procedure Act and Section 29 (4) (d) and 30 (1) of the Organized Crimes and Control Act, Cap 200. We wonder then why does the appellant argue that the Criminal Procedure Act is inapplicable while the same was among the provisions that were cited by him in moving the High Court. We reaffirm our decision that the provisions of the Criminal Procedure Act are applicable in this case and the learned High Court Judge rightly held that the offence is not bailable under Section 148 (5) (a) (iv).*

Counsel Nehemia Nkoko was therefore of argument, if the instant application was mixed with *the Criminal Procedure Act* and *the Economic and Organized Crimes Control Act*, the Respondent's objection could have merits. He added that, by the time the Rugemalira's decision was issued *the Economic and Organized Crimes Control Act* was yet to be amended to include money

laundering. Thus, the intention of the Parliament under *Section 36 (3) of the Economic and Organized Crimes Control Act paragraph (f)* that is the only offence which is unbailable and that is why under *Section 148 (5),* (*supra*) there is nowhere stated that a person charged of economic offence will be unbailable.

According to Counsel Nehemia Nkoko, basing on *Section 6 of The Law of Interpretation Act, Section 4 of the Criminal Procedure Act* should be applied in its intent and meaning. If a person is charged on economic crimes, *the Economic and Organized Crimes Control Act* should be applied.

In rejoinder, Senior State Attorney Genes Tesha argued that *Section 48 (5) of the Criminal Procedure Act* makes money laundering offence unbailable. Further, by the time the Rugemalira decision was made on 27th June, 2019 *the Economic and Organized Crimes Control Act* did not provide guidance on bail. Since the law on bail is very specific, there is no need of applying purposive approach.

I have very carefully followed the submissions of both Counsel. *First*, I'm of settled view that, as a general rule, unreasonable denial of bail would violate the provisions of **Article 15 (2) (a) of the Constitution of the United Republic of Tanzania**. That is the position of the Court of Appeal of Tanzania in the case of **Director**

of Public Prosecutions v. Daudi Pete (1993) TLR 22. *Second*, I'm of further view that bail can only be granted only if the charged offence is bailable. However, as rightly submitted by the learned Senior State Attorney Genes Tesha, **Section 148 (5) (v) of the Criminal Procedure Act** (*supra*) expressly prohibits bail on offences of money laundering. **Section 148(5)** (*supra*) states:

> A police officer in charge of a police station or a court before whom an accused person is brought or appears, shall not admit that person to bail if–
>
> a) that person is charged with-
>
> (i) Murder, treason, armed robbery, or defilement;
>
> (ii) Illicit trafficking in drugs against the Drugs and Prevention of Illicit Traffic in Drugs Act, but does not include a person charged for an offence of being in possession of drugs which taking into account all circumstances in which the offence was committed, was not meant for conveyance or commercial purpose;
>
> (iii) An offence involving heroin, cocaine, prepared opium, opium poppy (papaver setigerum), poppy straw, coca plant, coca leaves, cannabis sativa or cannabis resin (Indian hemp), methaqualone (mandrax), catha

edulis (khat) or any other narcotic drug or psychotropic substance specified in the Schedule to this Act which has an established value certified by the Commissioner for National Co-ordination of Drugs Control Commission, as exceeding ten million shillings;

(iv) Terrorism against the Preventive of Terrorism Act, 2002;

(v) *Money laundering contrary to the Anti-Money Laundering Act, 2006;*

(vi) Trafficking in persons under the Anti-Trafficking in Persons Act. (Emphasis added).

As properly submitted by Senior State Attorney Genes Tesha, there is the cardinal duty of interpreting laws in ordinary words. In the case of **Vidya Girdharal Chavda v. The Director of Immigration Services and Others** (1995) TLR 125 it was held:

The law should so be construed literally.

The Applicants have not convinced the Court as to why it should apply purposive approach of interpreting the law. The purposivism interpretation can be applied by embracing the use of extrinsic aids to assist in finding the Parliament intention. That can be done only

if the ordinary interpretation of the word does not give the proper intended meaning. In the instant application, the plain and ordinary meaning of *Section 148 (5) (v)* (*supra*) is that *the offence involving money laundering is not bailable.*

Much as I may agree with Counsel Nehemia Nkoko in that if a person is charged on economic crimes, *the Economic and Organized Crimes Control Act* has to be applied, it should not be forgotten that the object of Criminal Procedure Act is to provide for the procedure to be followed in the investigations of crimes and the conduct of criminal trials and for other related purposes including bail under *Section 148 (5) (v)* (*supra*). As such, when it comes to bail application, *the Economic and Organized Crimes Control Act* cannot be read in isolation.

Again, I find the cited decision in the case of **James Burchard Rugemalira** (*supra*) is of no help to the Applicants. As held by the Court of Appeal in that case, the High Court Judge rightly held that the offence is not bailable under *Section 148 (5)* (*supra*). The argument by Nehemia Nkoko that under *Section 148 (5) (supra),* there is nowhere stated that a person charged of economic offence will be unbailable, in my view, it is weak for all purposes. The reason is that money laundering which is covered under *Section 148 (5) (supra)* is an economic offence.

The above observed, the application is hereby dismissed for being devoid of merits. It is so ordered.

Y. J. MLYAMBINA

JUDGE

1/10/2020

Ruling delivered and dated this 1st day of October, 2020 in the presence of the applicant and Senior Learned State Attorney Genes Tesha for the Respondent.

Y. J. MLYAMBINA

JUDGE

1/10/2020