THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 119 OF 2020

(Arising from Economic Crimes Case No. of 2019, in the Court of Resident Magistrate of Mbeya, at Mbeya)

1. ERICK JAMSON MWASHIGALA.....1ST APPLICANT

2. BONIFACE JAILOS MWAZYELE.....2ND APPLICANT

VERSUS

THE REPUBLIC .....RESPONDENT

RULING

11 & 17/11/2020.

Utamwa, J.

This is a ruling on an application for bail pending trial of Economic Case No. 4 of 2019 before the Court Resident Magistrate of Mbeya, at Mbeya (the lower court). The applicants, ERICK JAMSON MWASHIGALA and BONIFACE JAILOS MWAZYELE, moved this court for bail under sections 148 (3) of the Criminal Procedure Act, Cap. 20 R.E 2002, (Now R.E 2019) hereinafter referred to as the CPA and any other enabling provisions of law. The application is supported by a joint affidavit of the applicants.

Essentially, the affidavit deponed the following facts: the applicants are charged before the lower court with 25 counts which are bailable. The

affidavit further deponed that, they have been in remand since 18th March, 2019. They also have reliable sureties and they are ready to observe all bail conditions that may be set by the court. The applicants have families which depend on them; again bail is a constitutional right.

The respondent objected the application by filing a counter affidavit sworn by Ms. Zena James, learned State Attorney. In essence, the respondent counter affidavit was stated that, the applicants failed to mention if they have reliable sureties or immovable properties to assure the court that in case they are granted bail, they will abide to the conditions to be set out by the court. She thus, urged this court to dismiss the application.

When the application was called upon for hearing, the applicants were present in person, unrepresented. On the other hand, Ms. Zena James, learned State Attorney represented the respondent /Republic. Ms. Zena submitted orally objecting the application on two grounds. Regarding the first ground of objection, she submitted that, the applicants are disqualified to be granted bail under section 148 (5) (c) of the CPA. This is because, the said provision of the law prohibits granting bail to a person who was previously granted it, but jumped the same. She further submitted that, the applicants in this application jumped bail in Criminal Case No. 3 of 2019 in the Court of Resident Magistrate of Mbeya. In that case they were charged with the offence of being found in possession of forged Bank Notes contrary to section 348 of the Penal Code, Cap. 16.

Regarding the second ground of objection, the learned state Attorney submitted that, the provision of section 148 (5) (a) (v) of the CPA,

prohibits courts of law to grant bail to persons charged with the offence of money loundering. She contended that, the applicants are jointly and together charged with money loundering under count 25th of the charge sheet. The count is contrary to section 12 (a) and 13 (a) of the Anti-money Loundering Act, No. 12 of 2006. She thus, prayed for this court to dismiss the application for lack of jurisdiction.

On his part, the first applicant denied to have jumped bail as contended by the learned State Attorney for the respondent. He contended further that, in the said criminal case (i.e Criminal Case No. 3 of 2019), he and the second applicant attended the court until when they were arrested and charged in the present case. Regarding the second ground, he argued that, this court has jurisdiction to grant bail even where the applicants are facing the charge of money loundering. His argument was based on the allegation that, one **Said Kubenea** was granted bail in the court of Resident Magistrate of Arusha, though he faced the charge of money loundering. He thus, insisted their application to be granted. The second applicant joined hands with what the first applicant submitted.

I have considered the joint affidavit, the counter affidavit, the submissions by the parties, the record and law. The major issue here is whether or not both applicants qualify to be granted bail. It is a clear position of our law that, bail is both a statutory and constitutional right for an accused person. The purpose of granting bail to an accused person is to let him enjoy his freedom as long as he shall appear in court for his trial; See **Hassan Othman Hassan @ Hassanoo v. Republic, Criminal Appeal No. 193 of 2014, Court of Appeal of Tanzania (CAT) at Dar**

es Salaam (unreported). I would also add here that, though bail is a constitutional right, it can be restricted or limited only where there are good reasons to do so; see the **DPP v. Daudi Pete [1993] TLR 22,** decided by the CAT.

Now the sub-issue is whether or not there are good reasons to reject the application at hand. The first reason given by the respondent for rejecting this application was that, the applicants were previously charged, granted bail but jumped it. However, when this court made an inquiry to the criminal case No. 3 of 2019, it noted that, indeed the applicants and two other persons, were charged and granted bail. However, But they did not jump bail until they were arrested and charged in the current case before the lower court. I thus, reject the first ground of objection.

Regarding the second ground of objection, Ms. Zena referred to the restrictions of bail under section 148 (5) (a) (v). These provisions guide as follows; I wish to quote it verbatim for readymade reference:

> "(5) 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) Not Applicable (N/A)
>
> ii) N/A
>
> iii) N/A
>
> iv) N/A
>
> v) **money laundering contrary to Anti-money Loundering Act;"**

In the light of the above provisions of the law, it clear that, the same are couched in a mandatory language by using the word "shall". It is also clear in the copy of the charge sheet attached to the affidavit that, the applicants are charged with, among other offences, the offence of money loundering contrary to sections 12 (a) and 13 (a) of the Anti-money

Loundering Act. This fact is evident under the 25th count. In such circumstances, in my view, there are good reasons for restricting bail for the applicants. This is because, the offence of money loundering is unbailable in law. The above sub-issue therefore, is answered affirmatively.

Owing to the above reasons, I agree with the argument by the learned State Attorney for the respondent that, this court has no jurisdiction to grant bail to the applicants. The arguments by the applicants that the Court of Resident Magistrate of Arusha granted bail to one Said Kubenea is untainable. This view is based on the following facts: one; the applicants did not provide proper citation of the case they referred to. Two; this court is not bound by decisions of the Court of Resident Magistrate.

The major issue thus, is answered negatively that, the applicants are not qualified to be granted bail. I consequently dismiss the application for reasons shown above. It is so ordered.

J.H.K. UTAMWA
JUDGE
17/11/2020.

Court: Order pronounced in the presence of the two applicants (by Virtual court) and Mr. Davis Msanga, learned State Attorney for the respondent, in Court, this 17th November, 2020.

THE HIGH COURT OF TANZANIA

J.H.K. Utamwa
Judge
17/11/2020