

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

**MISC CRIMINAL APPLICATION NO. 141 OF 2020**

*(Originating from Economic Crimes Case No. 17 of 2019 filed in the  
District Court of Kilombero sitting at Ifakara)*

**DOTTO FAQHI ZUBEIR ..... APPLICANT**

***VERSUS***

**REPUBLIC ..... RESPONDENT**

*Date of last Order: 21/09/2020*

*Date of the Ruling: 09/11/2020*

**R U L I N G**

**MGONYA, J.**

The instant Application is originated from the **Economic Case No. 17 of 2019** filed in the District Court of Kilombero sitting at Ifakara seeking two orders from this honorable court as herein below:

- (i) For the Court to examine the charge sheet of Economic Crime Case No. 17/ 2019 between the Applicant and the Respondent in order to satisfy itself as to the correctness, legality or propriety of the charge sheet particularly court No. 13 filed by the Respondent in the District Court of Kilombero at Ifakara on 17/01/2020.

- (ii) Subject to granting the Application the Applicant is also seeking for BAIL pending the determination of Economic Crime Case No. 17/2019 lodged in the District Court of Kilombero at Ifakara thereto.

The said application is made under sections **372, 373(1) (b); and 148 (3) and 149 of the Criminal Procedure Act, Cap. 20 [R. E. 2002]; and section 29 (4) (d) of the Economic and Organized Crime Control Act, Cap. 200 [R. E. 2002].**

The Chamber Application in respect of this Application has been taken at the instance of the Applicant and is supported by the Affidavit sworn by **Augustine Mathern Kusalika**, the Applicant's Advocate.

When the matter came for hearing on 7<sup>th</sup> September, 2020 Advocate **KUSALIKA** appeared representing the Applicant while Mr. Nasua the learned State Attorney appeared for the Respondent.

Submitting for the Application, Mr. Kusalika the learned Counsel referred this court to the Charge Sheet attached with the Application. From the same Mr. Kusalika was of the observation that, all the offences which the Applicant and other accused persons are held with are bailable in law serve for the offence stipulated in **Count No. 13** where the offence is that of **MONEY LANDERING**. The learned Counsel averred that, going through the particulars of the said offence of Money

Laundering there are two legal issues to be determined by this court.

It is the Counsel's concern that the said offence features to all the accused persons including the Applicant; However if one goes to the particulars of offence, there is no specific place which shows that indeed the Applicant and other accused persons have done a specific act of which invites the offence of Money Laundering.

Further it is the Applicant's Counsel assertion that, if one consults the Charge Sheet particularly **Count 12** which involves one of the Accused persons one **JONAS JOHN KIGAWA**, the dates in issue therein are clearly stated to be between July, 2017 and December, 2018 together with the clear information/ particulars of the offence different to the 13<sup>th</sup> Count.

Submitting on Count 13 which includes the Applicant and all other accused persons, the dates are from July, 2016 and October, 2018. It is from the same, the Applicant's Advocate submitted that, if the Applicant is accused with the same while James in the 12<sup>th</sup> count the dates are different, then it is his conviction that there is no specific time as referred by the law as all the charges are same for all Accused persons. Further, that in the absence of the specific time from count No. 12, then in lack of specific place which is mandatory requirement by law, renders the Charge Sheet defective.

From the above, it is the Counsel's observation that Count 13 has been placed in the Charge Sheet with ill motive only for the purpose of holding the Applicant and other accused person in remand pending prosecution.

The Counsel made reference to the book of **B. D. CHIPETA "A Handbook for Public Prosecutors" Third Edition Chapter 3 on Formulation of Charges/Complaints** where it was observed that:

*"... A charge has three parts: the first gives the name, age, address and tribe or nationality of the accused person(s); the second contains the statement of the offence and a citation of the section of the law alleged to have been contravened; and the third part contains particulars of the alleged offence, "Particulars" here means a brief but clear statement of the acts or omissions alleged to have been done or omitted to be done by the accused person. So the particulars should contain the date, time and place the alleged offence was committed, the act or omission complained of, the name of the victim, if any the property involved, if applicable, and its value, etc."*

From the above, it is the learned Counsel concern that on the 13<sup>th</sup> count, there is no specific place of which the offence has been committed since Kilombero District is very wide and that the Prosecutor was supposed to state specifically where

and how the offence of Money Laundering has been committed.

Further it was the Counsel's concern that **Section 133 (1) of Criminal Procedure Act**, gives mandate in preparing the Charge Sheet to join the offences together. However, there are some conditions which have to be met including same facts, same form, similar characters and services of offences. Insisting on his point, the learned Counsel referred this court to revisit the charge sheet in **Count No. 12**, where the time indicated that is July, 2016 and December, 2018 is not featured to the particulars of the offence of money laundering in 13<sup>th</sup> Count. Further, it is the Counsel's concern that the place where the offence was committed is not featured in the same count.

The learned Counsel stated that, **Section 132 of the Criminal Procedure Act, Cap. 20 [R. E. 2002]** which concerns the Charge Sheet, the requirement of specific place and of time is important to be indicated. The Counsel said, in the absence of the above renders the Charge Sheet incompetent.

Finally, the learned Counsel submitted that, the nature of offences the Applicant and others are facing is THEFT, so under normal circumstances, the offence of stealing has to be proved first before going to the 2<sup>nd</sup> offence of Money Laundering, since these are extremely two different offences in Litigation. In the

event therefore, it was not proper for the Respondent to join together the offence of stealing and that of Money Laundering.

Basing on the above explanation, the Applicant's Counsel prayed this honourable court to look into the Charge Sheet correctness and legality and grant the first prayer.

As for the second prayer, the Counsel averred that, subject to the 1<sup>st</sup> prayer, especially if count No. 13 is expunged, then the rest of the offences are bailable. In the event therefore, the Counsel pray the Applicant be granted BAIL accordingly.

Responding to the Applicant's submission, Mr. Nasua the learned State Attorney submitted that there is no disputed that the Applicant is charged under **Economic Crime Case No. 17/2019** before District Court of Kilombero at Ifakara. Also there is no dispute that the said main case is still pending where the consent and certificate to confer jurisdiction is yet to be lodged. Further, under the circumstances of the case, the District Court of Kilombero at Ifakara has no jurisdiction to entertain such matter. Therefore at that instance, the said Court is regarded as committing court with very minimal role only to cause the statements of the accused to be read as per **section 245 (3) and 246 (2) of CPA; Cap. 20 [R.E. 2002]**.

From the above, it is the learned State Attorney's assertion that the present Application before this honorable court does not involve the legal matter and such the Applicant's

Counsel concerns which were raised in submission in chief, regarding to the correctness of the Charge Sheet specifically on Count 13, cannot be determined at this stage.

Explaining further, the learned State Attorney prayed to distinguish the above raised argument by the Applicant of which he termed as legal matters of which at this stage cannot be entertained by the lower court due to the fact that the subordinate court to which the main case is, has no jurisdiction hence this court too cannot direct any order to be exercised by the said court.

On the above point, the learned State Attorney Counsel referred this court to the case of ***REPUBLIC VS. FARID HADI AHMED & 21 others; Criminal Appeal No. 59/2015*** at pg. 15. From the same, it is the Counsel's submission that since the present Application is on the Revision regarding to the pending suit at the Lower Court to which has no jurisdiction, it is the Counsel's prayer that the instant Application be dismissed and the same Application can be raised when the Lower Court has jurisdiction; meaning that when the consent of the DDP and the certificate to confer jurisdiction has been lodged.

Further, it was the learned State Attorney's observation that since this Application has been advanced for bail on which Count 13 has been devoid; the Applicant will still be charged with the offence of Money Laundering which is still not bailable.

From the above submission, it is the learned State Attorney's prayer the instant Application be dismissed.

In rejoinder, Counsel Kusalika briefly reiterated that, their concern is on Count No. 13; the one which is on Money Laundering which resulted into the Applicant's denial to bail.

I have carefully heard both parties' respective submissions. As the claim before the court is simply laying on the Charge Sheet particularly on Count 13, then it is important for me to define what the charge sheet is and the important characters of the same.

**Section 132 of the Criminal Procedure Act, Cap. 20**

**[R.E. 2019]** entails the requirement in formation of the Charge Sheet. The provisions of this section requires offences to be specified in Charge with necessary particulars for ease of reference, the section provides:

*"Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary **for giving reasonable information as to the nature of the offence charged**"*



From the above, as the Charge Sheet, in its 13<sup>th</sup> Count has been attacked by the Applicant, then the same deserves to be quoted as herein below:

**"13<sup>TH</sup> COUNT: FOR ALL ACCUSED PERSONS**

**STATEMENT OF OFFENCE**

**MONEY LAUNDERING:** *Contrary to Section 12 (d) and 13 (a) of the Anti-Money Laundering Act, No. 12 of 2006 read together with Paragraph 22 of the First Schedule to, and Sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act Cap. 200 [R.E. 2002] as amended.*

**PARTICULARS OF OFFENCE**

**GREGORY MASOUD MIDASI, MABEYO ELIKANA SANGIJA, DOTTO FAQHI ZUBEIR, KASSIM THOMASI KALIMANG'ASI, ATHUMAN MDAMBA, HONGERA MWASISOJA, ELIKAGHA KANDONGELE, ONESMO BUGUMBA, GERMANUS LIGUMBUKA, JUMANNE KINDULI and JONAS JOHN KIGAWA** on diverse dates between July, 2016 and October, 2018 within Kilombero District in Morogoro Region jointly and together, engaged themselves in property, Tanzania Shillings Three Hundred Forty Seven Million, Seven Seventy Five Thousand and Eight Hundred Thirty Five Hundred only (**Tshs. 347,775,835/=**) while they knew

*that, the said money was the proceeds of predicate offence namely Stealing."*

It is from the above definition of Charge Sheet, then it is my conviction that the main questions that are to be answered in order to formulate a proper Charge Sheet are: **Who, When, Where and What?**

It is from the particulars of the above count, the first question of two **Who**, is answered to be **ALL ACCUSED PERSONS** with their names as they appear in the said count.

As to the second question of **When**, the answer is to the effect that "**on the diverse dates between July, 2016 and October 2018**". While on **Where** the answer is "***Within Kilombero District in Morogoro Region***".

As I am trying to get as to **What** was done by the Accused persons for the Prosecution to rule out that the offence is that of **MONEY LAUNDERING**, I only have the following at hand: "***...jointly and together, engaged themselves in property, Tanzania Shillings Three Hundred Forty Seven Million, Seven Seventy Five Thousand and Eight Hundred Thirty Five Hundred only (Tshs. 347,775,835/=) while they knew that, the said money was the proceeds of predicate offence namely Stealing.***".

I have to confess that the wording on particulars as to what the Accused persons did to constitute the offence of

Money Laundering. , in the said count the particulars therein are vague, indefinite and ambiguous so to say. I have to remind the Prosecution that the purpose of the Charge Sheet is to inform the accused person of what he is charged with so as he/she won't be taken by surprise. Further, is for the accused person to prepare himself for whatever defense he/she might have in defeating the claim against him. In the event therefore, the Charge Sheet needs to be straight and self-explanatory.

The importance of having the accurate Charge Sheet has been stated in a number of cases. To name the few are:

The case of ***SALI LILO VS. REPUBLIC Criminal Appeal No. 431 of 2013 (CAT at Tabora) (Unreported)***, when the court was emphasizing on the proper framing of charge especially on the duty of the prosecution to correctly frame charge and check if the charge is properly, the court held that:

*"We take this opportunity to remind the trial courts to take note of the observation made in the case of **MOHAMED KANINGO VR. REPUBLIC [1980] T.L.R 279 that:** "While it is the duty of the prosecution to file charges correctly, those presiding over Criminal trials should, at the commencement of the hearing, make it a habit of perusing the charge as a matter of routine to satisfy themselves that the charge is laid correctly, and if not to require that it be amended accordingly"*

**"QUOTING FROM MOHAMED KANINGO VS. REPUBLIC [1980] T. L. R. 279."**

Another case is that of **OSWALD ABUBAKARI MANGULA VS. REPUBLIC [2002] T.L.R. 271** (CAT at Mbeya) when the court had observed that the Charge did not disclose any offence in accordance of Section 129 of the CPA, 1985, the court had this to say:

***"....It is a salutary rule that no charge should be put to an accused person before the magistrate is satisfied, inter alia, that it discloses an offence known in law. It is intolerable that a person should be subjected to the rigours of a trial based on a charge which in law is no charge. It should always be remembered that the provisions of Section 129 of the CPA are mandatory....."***

***The charge laid at the Appellant's door having disclosed no offence known to law, all the proceedings conducted in the District Court on the basis thereof were a nullity. Since you cannot put something on nothing, the learned judge of the High Court should have declared the proceedings a nullity."***

Finally is the case of **REPUBLIC VS. TITUS PETRO**

**[1998] T.L.R. 395 (HCT at Mwanza)** when my Brother **Lugakingira, J.** was determining the Charge which did not disclose any offence, had this to say:

***"The charge was wrong and was wrongly admitted as it did not disclose any offence committed; the trial court should have refused to admit it.***

***.....The money obtained by the accused was received by him for purposes of a business partnership which then failed; this gave the complainant the right to sue in contract and did not amount to the offence of obtaining credit by false pretences "FISHER VR. RAVEN [1964] A.C. 210 AND REPUBLIC VS. PRYCE (1949) 34 Criminal App. R. 21 distinguished."***

In the above case, the Proceedings were quashed and sentence set aside.

From the above, I have to state without ado that the **13<sup>th</sup> count in the said Charge Sheet before the subordinate court is defective.** I join hands with the learned Counsel Kusalika suspecting that, in the midst of this imperfection, it seems that the said count has just been placed to hold the accused person hence the said count is notailable. Even if that was the case or not then the accuracy of the count was supposed to be taken into consideration so as to waive the ill motive feelings towards the accused persons.

In the cause of hearing the parties' submission in respect of this application, I have to show my disappointment as the learned State Attorney did not at all respond to the issue placed before the court by the Applicant's Counsel. In fact I expected that the learned State Attorney to respond especially on the correctness or otherwise of the concerned Charge Sheet on 13<sup>th</sup> Count of which is complained thereto.

Further, I have to say that the case that was cited by the State Attorney is indeed distinguishable as the issue here is the defective Count of which has offended the Applicant's bail. In fact, it is my conviction that the said legal anomaly was supposed to be dealt by the subordinate court where the case lies from the very beginning where the charge landed before the court. It cannot go into someone's head that even the correctness of the Charge Sheet / Counts has to wait the High Court as the subordinate Court has no jurisdiction. I say so as the Charge Sheet composed with the counts is the document that originates the accused offences. If the same has been mistaken, the proper and in a gentleman's manner, those who brought up the same have to take a quick step in correcting the same as the defective Charge Sheet cannot command any further step towards litigation even in the preliminaries as the proceedings will be rendered nullity.

If the defective count is the one which has been used to deny the Applicant bail, without having alternative words, I can

say that is quite unfair and unprofessional. If the same was incorrect, the same was supposed to be corrected and allow the rest to follow in the correct channel in the earliest stage. At this point I have to state that **Section 129 of the Criminal Procedure Act** was to be adhered to. The same provides:

***"Where the Magistrate is of the opinion that any complaint or formal charge made or presented under section 128 does not disclose any offence, the Magistrate shall make an order refusing to admit the complaint of formal charge and shall record his reasons for such order."***

After I have ruled that the 13<sup>th</sup> count in the Charge Sheet is defective, and in determining the 1<sup>st</sup> prayer, I proceed **expunge** the said **13<sup>th</sup> Count** from the Charge Sheet in respect of the **Economic Case No. 17 of 2019 before the District Court of Kilombero at Ifakara**, and consequently, in the absence of the 13<sup>th</sup> count of which denied the Applicant's bail, the Applicant is entitled to be released on **bail** upon fulfillment of the following conditions:

- (a) The Applicant to deposit into court a cash sum of **Tsh. 20,000,000 (Twenty Million Shillings)** or in the alternative, the Applicant is to deposit into court a title deed of immovable property (certified by the professional valuer) equivalent to the above sum.

- (b) The Applicant is to surrender his travelling documents if any, to the nearest police station within the jurisdiction where charge arose.
- (c) The Applicant is hereby ordered to **have two reliable sureties.**
- (d) The Applicant is hereby restricted from travelling and/or visiting any place outside Morogoro without express written permission of the court.

Consequently, **the Application is accordingly granted to the extent, terms and conditions stipulated above.**

It is so ordered.

**L. E. MGONYA**  
**JUDGE**  
**09/11/2020**

**Court:** Ruling delivered in chamber before Hon. Kisongo, Deputy Registrar in the presence of Mr. A Kusarika, Advocate for the Applicant, Applicant present at Ukonga via Video Conference, Ms. M. Ndakidemi, Advocate for the Respondent and Ms. Veronica Bench Clark today 09<sup>th</sup> November, 2020.

**L. E. MGONYA**  
**JUDGE**  
**09/11/2020**