

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA

MISCELLANEOUS CRIMINAL APPLICATION No. 16 OF 2021

ODHIAMBO VICTOR @ OCHIENG APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

*(Originating from Economic Case No.1 of 2020 in the District Court of
Musoma District at Musoma)*

RULING

5th March, 2021

Kahyoza, J

The applicant has applied for bail to this Court under Section 148 of the **Criminal Procedure Act**, (the CPA). The applicant is charged among other offences with the offence of money laundering contrary to section 12(d) and 13(a) of the **Anti-Money Laundering Act**, No. 12/2006.

Before the hearing commenced, Mr. Temba, the S/A rose and informed this Court that the accused is charged with non-bailable offence under section 148(5) of the **CPA**. The applicant contended that he was advised to apply to this Court.

It is common understanding that the offence of money laundering is not bailable section 148(5) of the **CPA** states that;

*"148 (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) 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 Prevention of Terrorism Act;

*(v) **Money laundering contrary to Anti-money Laundering Act;***

(vi) Trafficking in persons under the Anti-Trafficking in Persons Act;

(b) It appears to the court that it is necessary that the accused person be kept in custody for his own protection or safety;

(c) It appears that the accused person has previously been granted bail by a court and failed to comply with the conditions of the bail or absconded;

(d) It appears to the court that it is necessary that the accused person be kept in custody for his own protection or safety;

(e) The offence with which the person is charged involves actual money or property whose value exceeds ten million shillings unless that person deposits cash or other property equivalent to half the amount or value of actual money or property involved and the rest is secured by execution of a bond:

Provided that, where the property to be deposited is immovable, it shall be sufficient to deposit the title deed, or if the title deed is not available such other evidence as is satisfactory to the court in proof of existence of the property; save that this provision shall not apply in the case of police bail.”(Emphasis is added)

The Court of Appeal of Tanzania had an opportunity to interpret the above section in the case of **James Burchard Rugemalira V. R** Cr. Appeal No. 391/2017, where it decided 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 offences."*

I find that it is now common understanding and legal principle that the offence of money laundering is one of the non-bailable offences. I need not be deeply imbued with long submissions pro and against the issue whether money laundry offence is bailable or not.

For the reason stated above, I dismiss the application for want of merit.

It is ordered accordingly.



J . R. Kahyoza

JUDGE

5/3/2021

Court: Ruling deliver in the instantly in the present of the parties. B/C Catherine present.




J . R. Kahyoza

JUDGE

5/3/2021