IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 1 OF 2021

(Originating from Economic Crime Case No. 11 of 2021 in the Resident Magistrate's Court of Sumbawanga at Sumbawanga)

IDDY RASHID MWAJA @ MCHINA ..... APPLICANT

VERSUS

THE REPUBLIC ..... RESPONDENT

Date of last Order: 09/02/2021
Date of Ruling: 04/03/2021

RULING

C.P. MKEHA, J

Through Mr. Kusarika learned advocate, the applicant is moving the court for a revisional order to wit, calling for record and examining a charge sheet in Economic Crime case No. 11 of 2020 of the Resident Magistrate's Court of Sumbawanga in order to satisfy itself as to the correctness, legality or propriety of the charge sheet filed by the Respondent on 29th December 2020. And, subject to granting the application for revision, the applicant is further asking the court to grant bail pending determination of Economic Crime Case No. 11 of 2020 which is now pending before the Resident Magistrate's Court of Sumbawanga.

The application is made under sections 372, 373 (1) (b), 148(3) and 149 of the Criminal Procedure Act as well as section 29 (4) of the Economic and Organized Crime control Act. Whereas in the first count the applicant is charged with an Offence of Stealing by Argent c/s 273 (b) of the Penal Code, in the second count, the applicant is being charged with an offence of Money Laundering c/ss 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 section's 57 (1) and 60 (2) of the Economic and Organized Crime control Act.

According to the learned advocate for the applicant, the second count is defective. The learned advocate's reasoning was that, whereas the first count is alleged to have been committed between 5th and 15th July, 2020, at various places of Rukwa and Katavi Regions, the second count is alleged to have been committed on 13th November, 2020 within Rukwa Region. That, on 13th day of November 2020, the applicant purchased vehicle No. T. 969 DUU Make Toyota Crown while knowing that the money he used was part of proceeds of a predicate offence namely, stealing by agent which had enabled him (the applicant) to obtain TZS. 75,000,000/=, the property of EXPORT TRADING COMPANY LIMITED, which was entrusted to him by one JUMA s/o ATHUMANI KALINJA for purposes of purchasing 45 tonnes of simsim on account of the said EXPORT TRADING COMPANY LIMITED.

The learned advocate for the applicant submitted that, in the first place, the particulars regarding the second count do not indicate a specific place where

the said offence was committed, which is going contrary to the requirements under the Criminal Procedure Act. The learned advocate submitted further that, the two offences were not closely committed in terms of time. That, the second offence was committed more than three months after commission of the first offence hence, they cannot be said to have been committed in the course of the same transaction as to be charged in the same charge sheet. In view of the learned advocate, the offence of Money Laundering would properly be brought in the same charge sheet, had it been that the allegation was to the effect that, the same was committed between 5th and 15th July, 2020 when the predicate offence was allegedly committed.

Mr. Marungu learned Senior State Attorney submitted in reply that in terms of section 148 (5) (a) (v) of the Criminal Procedure Act, the offence of Money Laundering is unbailable. The learned Senior State Attorney went on to submit that there is no requirement under the Criminal Procedure Act that, in all offences, a specific place where the offence was committed has to be named. The learned Senior State Attorney insisted that, all what is needed under section 132 of the Criminal Procedure Act is that, reasonable information has to be given.

The learned Senior State Attorney submitted further that time and events have to be considered before considering whether two or more offences qualify to be charged in a single charge sheet. The learned Senior State Attorney added that, the case of **Jetha vs. Republic, 13 EACA 107** which

had been cited by the learned advocate for the applicant could not apply in this case as the offences charged in the said case were not in any way related.

The learned advocate's rejoinder was a reiteration of what had been earlier submitted in Chief. I find no need of reproducing them for the second time.

The issues for consideration are the following:

(i) Whether it is always necessary to name a particular place where the offence was committed in every charge sheet.

(ii) Whether two distinct offences committed at an interval of less than four months from when the first offence was committed, to the time when the second offence was committed, cannot be charged together.

Under section 132 of the Criminal Procedure Act, a charge sheet or information is sufficient if it contains a statement of the specific offence or offences with which the accused is charged together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged. Unlike what the learned advocate for the applicant insisted, specific place where the offence was committed is not made one of the necessary particulars. I agree that naming of the specific place where the charged offence was committed adds reasonable information and puts an accused in a better position to prepare for his defence. The charge sheet laid

against the applicant is not completely silent on that aspect. It is alleged in the said charge sheet that, the second count was committed by the applicant within Rukwa Region. Given the current wording of section 132 of the Criminal Procedure Act, it is my holding that, the second count is compliant with what the law requires in so far as place of commission of offence is concerned.

Reliance was put on the decision in **Jetha vs. Republic, 13 EACA, 107** to make an argument that, since the 2nd offence was alleged to have been committed more than three months after the date on which the first offence is alleged to have been committed, then, the two offences could not be charged in the same charge sheet and that the second count was defective. In the said case the facts were briefly that, on 27/06/1945 the accused allegedly obtained goods by false pretences. On 08/07/1945, the accused made a false report that his house had been burgled. He was charged in the same charge with the two offences of obtaining goods by false pretences and giving false information. It was held on appeal that, since some 10 days had elapsed between the commissions of the two offences, it was doubtful whether the charge in respect of the false report could be said to be founded on the same facts and that it might more properly have been made the subject of a separate trial.

The criteria for charging offences together in the same charge or information is stipulated under section 133 (1) of the Criminal Procedure Act. Offences may be charged together in the same charge or information if the offences

are founded on the same facts or if they form or are a part a series of offences of the same or a similar character. In our jurisdiction and under the current state of the law connectivity in terms of closeness of time of commission of the offences to be charged together is not of great essence. Even if it were, as it is in other jurisdictions, it cannot be rightly argued that, a period of less than four months was more than reasonable for purposes of charging a predicate offence together with an offence of money laundering associated with it.

The learned advocate for the applicant did not bring forward the relevant provision of the law under which the charge in the cited case was drafted. In the case of **KAMWANA s/o MUTIA vs. REPUBLIC (1958) EA 471,** four distinct offences were charged together. There was an interval of almost one month from when the first three offences were committed to the date on which the fourth offence was committed. Whereas the first three offences related to house breaking and theft, the fourth offence related to being found in possession of "Bhang". It was held that, the count charging the appellant with possession of "Bhang" should not have been included in the same charge sheet with the three other dissimilar counts. The case of **Jetha vs. Republic, 13 EACA 107** was also decided in the way it was decided because of the dissimilar nature of the counts charged therein and not basing on the aspect of time as the learned advocate for the applicant would seem to suggest.

Since there is no denial of the fact that the offence of Money Laundering is unbailable and basing on the reasons I have given hereinabove, I hold the application to be unmeritorious. The same stands dismissed.

Dated at **SUMBAWANGA** this 04th day of March, 2021.

C.P. MKEHA

JUDGE

04/03/2021

Court: Ruling is delivered in the presence of the applicant in person and Mr. Kabengula learned State Attorney for the Republic.

C.P. MKEHA

JUDGE

04/03/2021

Court: Right of Appeal explained.

C.P. MKEHA

JUDGE

04/03/2021