

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

APPELLATE JURISDICTION

MISC. ECONOMIC CASE NO. 5 OF 2021

*(Original Economic Case No. 6 of 2020 of the Resident Magistrate Court of
Kigoma at Kigoma).*

SHIRE 2004 TRANSPORT CO. LIMITED.....APPLICANT

VERSUS

1. THE REPUBLIC

2. EMMANUEL S/O BUFE @ MKUYU

3. LILA S/O JELA @ SAID

4. JOSEPH S/O ATANAS NANAGE @ KIPARA

5. CONSTANTINE S/O TULUMANYA @ MALANDA

6. SALEHE S/O ALLY @ MGANGA

.....RESPONDENTS

RULING

Date of last Order: 29/06/2021

Date of Ruling: 30/06/2021

Before: Hon. A. Matuma, J

This is not a new or fresh matter before me altogether. The applicant had a similar application before me against the same respondents on the same matter vide Misc. Economic Case no. 14 of 2020 which was dully determined partly in favor of the Applicant on the 8th July, 2020.

It appears that my previous order was circumvented by the 1st Respondent (Republic) as shall be demonstrated herein below hence this application for an order that the motor vehicle with Registration number T. 635 CLV make Volvo with its trailer No. T. 151 CJM and a container which are involved in Economic case No. 6/2020 pending in the Resident Magistrate's Court of Kigoma be restored to the applicant pending the final determination of that economic case.

According to the affidavit in support of the application just like it was in the previous application as herein above stated, such vehicle, trailer and the container were compounded on the 22/12/2019 and detained at Kibondo Police station for allegedly having found transporting forest produces unlawfully. The records of this application as per annexure "C" reveals that it was the 3rd respondent **Lila s/o Jela @ Said** who was entrusted to drive the said vehicle ferrying some goods from Dar es salaam to Bujumbura Burundi and had to return to Dar es salaam in 30 days as from 12/12/2019 but unfortunately the vehicle was involved in matters beyond the applicant's knowledge leading to the above named economic case.

Mr. Daniel Rumenyela learned advocate for the Applicant at the hearing of this application submitted that the vehicle has been detained for almost two years now, causing the applicant who is not a party to the pending economic case to suffer a lot.

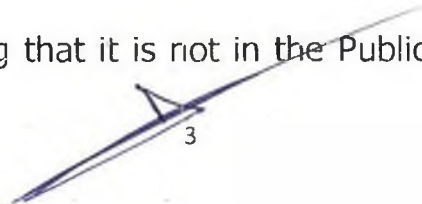
In the circumstances, he submitted that the vehicle, the trailer and container be handled over to the applicant and if need be for the same to be used in evidence during trial, she shall be ready to produce them.

The 2nd, 3rd, 4th, 5th and 6th respondents were absent at the hearing of this application but due to the nature of this application I was of the view that the application could proceed for hearing in their absence as there is no adverse order which is likely to be issued against them. In fact, in the previous application they did not object the applicant's prayer which is mutatis mutandis to the instant one. They indeed supported it some of them stating that they did not even know such properties as they were not arrested with them nor had seen them. Refer annexure "C" to the instant application.

Mr. Robert Magige learned state attorney objected this application submitting that releasing the properties herein will prejudice the prosecution case as they intend to use them as exhibits.

He submitted that the investigation of the matter is complete and the Police case file is at the DPP's office for consent and certificate so that a trial commences in the subordinate Court.

Having listened to the submission of both parties, and reading their respective affidavit and counter affidavits, I am of a settled mind just as it was in my previous ruling that it is not in the Public interest to compound



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the alleged instrumentalities of the crime to undefined period of time as by doing so would not only injure the business of the applicant and her individual economic status who has not been accused of any offence nor adjudged criminal or convict but also, of the members of the general public who by one way or another would have benefited for their continuing use.

In my previous ruling which I reiterate in the instant application, I held that such compounding of people's properties without trial for final orders of the court to their fate is nothing but pulling into poverty owners of such properties in case it is decided at the end of trial that the properties are not liable for forfeiture or confiscation to the State. This is due to the fact that by that time such properties would either be deteriorated, damaged or lost its value for being deserted against their orders or nature like vehicles which would normally damage in cases they are not in their routine use and services. Some spares would completely be out of use and demand replacement or get lost in the hands of unfaithful custodians as it is used to be the general cries of the general public in most cases whose exhibits were held for a long time before the final orders in their respective cases, some of those spares being so expensive.

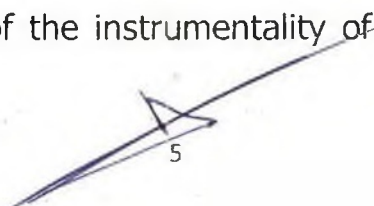
On the other hand, even if the properties at the end are forfeited or confiscated to the government would have no benefit as by that time the



properties would have lost its value and sometimes has costed much in its custodianship.

In the circumstances, the public interest demands that whenever investigations of crimes are carried on in cases involving properties, such investigation must be carried on honestly, hurried and exhibits properly handled with its mandatory services or maintenances when need be so that neither the Republic nor owners of such properties would suffer any loss in case the properties are finally ordered to be taken by either party.

In the instant matter, the applicant is not a party in the Criminal trial pending in the subordinate Court. The matter being an economic offence and the vehicles herein allegedly instrumentalities of the crime, the applicant is therefore entitled to restoration of her properties if she satisfies to the Court that she was and is innocent of the crime charged as it was held in the case of the ***Director of Public Prosecutions versus Mikula Mindungu***, Criminal Appeal No. 47 of 1989, (CAT) at Mbeya (unreported). This is for obvious reasons that there is no automatic forfeiture of the instrumentalities of crimes even if the conviction is entered. The only count in the charge sheet which is involving the properties herein is the sixth count for transportation of forest produce contrary to section 89(b) of the Forest Act No. 14 of 2002. Under that provision there is no requirement that upon conviction the forfeiture of the instrumentality of the crime would follow.

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Instead it is under the provisions of section 97 (1)(b) of the same Act which provides that in case of conviction under the Act, the court may forfeit the instrumentality of the crime to the forest reserve manager. Therefore, forfeiture is not mandatory. The same is subject to litigation between the parties and those who might happen to be interested in the property. The 1st Respondent should thus not treat the vehicles as if there is automatic forfeiture and or that such an order has already been obtained by her.

The 1st respondent did not satisfy this court that the said vehicles are in good order and properly maintained for the whole period it was compounded. That being the case, the vehicle, trailer and container should not be left to deteriorate or damage to the detriment of the applicant who has yet been heard of her innocence or otherwise in the matter.

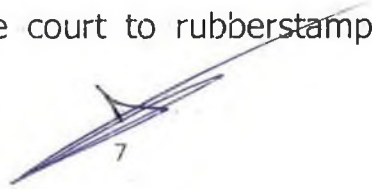
In the previous application despite of reasoning as herein above, I found that it was the most interest of justice to abstain from granting the prayer because Mr. Riziki Matitu learned senior state attorney who appeared for the Republic had informed the court that the investigation of the matter was complete and the case file was in his office just for preparation and filing to the subordinate Court the **Consent** and **Certificate** for the trial to take off.

In that regard, I ruled that the requisite documents be filed as intended for the trial to start and the properties herein tendered as exhibits and the trial Court be in a position to rule out on their fate. I ordered that the prosecution

should in ten days from that day 08/07/2020 be ready for trial of the matter, i.e. during such period they must either be already filed the relevant documents to the subordinate Court for the trial to take off or already decided otherwise to the finalization of the matter and the fate of the properties herein be determined.

I further ruled that in case the ten days expires without the prosecution filing the consent and certificate conferring jurisdictions to the subordinate Court for trial of the matter, the ruling would be in effect that the prayer for restoration of the stated exhibits is granted and the same would have to be handled over to the applicant for her safe custody until when they will be required in Court as exhibits.

As rightly submitted by Mr. Daniel Rumenyela learned advocate for the applicant, the prosecution to circumvent the order of this court went back in the committal court and withdrew the case and refile it afresh. Thereafter they relaxed as if there was no body feeling pain of their unjustified actions to date. They are acting as if they have already won the case and obtained forfeiture order. Even admission of exhibits in court is not automatic but the same is subject to the satisfaction of the requirements of the law. The 1st respondent herein is acting as if he has already passed that stage. In its totality the respondent has already forfeited the properties in her mind and she is intending to force the court to rubberstamp her already minded

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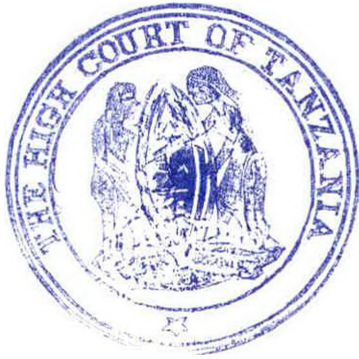
position. That is bad in the administration of justice as it tends to persecute as against to prosecute. It is an abuse of court process and the rule of law. It is a misuse of powers vested in the office of the Director of Public Prosecutions.

I therefore grant this application and order that the motor vehicle make Volvo with registration number T. 635 CLV, its trailer No. T 151 CJM and the Container be immediately handled back to the applicant for her safe custody and maintenance pending trial. My order extends to the right of the applicant to continue using the vehicles in his economic activities without transferring its ownership thereof to any third party until the final orders are made by the trial court. The applicant shall be required to surrender the vehicle when needed for trial without fail provided that a sufficient notice shall be given to him at least thirty days before the date of trial to accord him opportunity to bring the exhibit in court.

Since the learned State Attorney has informed this court that the compounded vehicles are at TFS office Kibondo, this order of restoration shall be executed by presenting it to the Forest Reserve Manager/Officer at Kibondo District who is in custody of the vehicle and he or she shall immediately comply with it. Failure so to do he or she shall be liable to be arrested and arraigned before this court to show cause why should he or



she not be sent into prison for disobeying the lawful order of the court. It is so ordered. Right of appeal is hereby explained.



A. Matuma

Judge

30/06/2021

Court: Ruling delivered on this 30th day of June, 2021 in the presence of Mr. Daniel Rumenyela learned Advocate for the Applicant and Mr. Robert Magige learned State Attorney for the 1st Respondent and in the absence of the 2nd, 3rd, 4th, 5th and 6th Respondents.

Sgd: A. Matuma

Judge

30/06/2021