

**IN THE HIGH COURT OF TANZANIA
AT ARUSHA**

CRIMINAL APPLICATION NO.15 OF 2021

**(Originating from Economic Case No. 96 of 2019 before the
Resident Magistrate Court of Arusha at Arusha)**

THOMAS SANJIRO KUTEYO.....1ST APPLICANT
EMANUEL MEYANI@ SENGEWA.....2ND APPLICANT
EDWARD MEYANI SANGEU MOLLEL.....3RD APPLICANT
LAMBRIS LANGASAN @ MEYANI.....4TH APPLICANT

VERSUS

THE DPP.....RESPONDENT

RULING

19/07/2021 & 28/07/2021

KAMUZORA J,

The above applicants filed this application under the provision of section 149 of the Criminal Procedure Act, (Cap 20 RE 2002), section 29 (4)(d) and 36 (1) of the Economic and Organised Crimes Control Act (Cap 200 RE 2002) read together with section 10 of the Written (Miscellaneous Amendment) Act No. 3 of 2016. The applicants' prayer is for the order of this court granting bail to the applicant pending trial of the Economic Case No. 96 of 2019.

When the matter came for orders, the learned State Attorney raised a point of law that, the DPP has already issued a certificate objecting the applicants' bail and thus they cannot bring the same application. The

learned State Attorney explained that, prior to this application, the applicant had filed a similar application which was withdrawn by them after a certificate objecting their bail was filed in court. The opted to file this application on the referring the same Economic case. The learned State Attorney was of the view that, since the economic case to which the certificate was issued is still pending this application cannot stand. She added that the DPP certificate is still in force and the court's hand are tied and cannot grant bail to the applicant in the existence of the DPP certificate.

The applicants' response to that argument is that, they acknowledge the fact that they filed an application for extension of time which was withdrawn. But to their view, the DPP certificate has time limit as it can only be valid for sixty days. That as the certificate was issued on July 2020, its time has already lapsed and after the lapse of that limit, they decided to file a fresh application on January 2021 praying for bail. They insisted to have a right to bail and prayed for this court to grant their application as bail is not a favour rather a right.

In her rejoinder, the learned State Attorney added that, Application No. 14 of 2020 concerned the same prayer for bail. That, under section 36 (3) of the Economic and Organised Crimes Control Act, (Cap 200 RE 2019) it is clear that, where the certificate is filed by the DPP, the certificate stays valid until the final determination of the case or where the DPP opt to withdraw the certificate. She insisted that, there is no time set for the certificate as so claimed by the applicants. She maintained that, as the **case to which the appellants are charged is not yet determined and the DPP has not withdrawn the certificate, the present application for bail is null and void.** She therefore prayed for the same to be dismissed.

I have considered the point raised by the learned State Attorney and the submission from both sides as well as the law in question. There is no dispute that this is a second attempt for the applicant to seek bail in this court. The first attempt was through Miscellaneous Criminal Application No. 46 of 2020 that was withdrawn by the applicants on 19/03/2020. It is also not disputed that, the DPP filed a certificate to the court objecting the applicants bail on ground that, safety and interests of the Republic will be prejudiced. It is not disputed that that certificate was not withdrawn by the DPP. The question is whether the certificate is still valid and could deny the applicant right to bail.

The certificate objecting the appellants' bail was issued under section 36 (2) of the Economic and Organised Crimes Control Act (Cap 200 RE 2002). The said section reads: -

"Notwithstanding anything in this section contained, no person shall be admitted to bail pending trial, if the Director of Public Prosecutions certifies that it is likely that the safety or interests of the Republic would thereby be prejudiced."

The said section is very clear that, where the DPP certifies that the safety or interest pf Republic would be prejudiced, then the person charged will not be granted bail pending trial. It was contended by the applicant that, the life span for the DPP certificate is only sixty days and as the same has already lapsed it is prudent that they be granted bail. That argument was countered by the learned State Attorney who invited this court to read subsection 3 of the same section 36 to which the certificate by the DPP will remain valid until the final determination of the case or only expires

or where the DPP withdraws the certificate. For purpose of convenience, the said subsection 3 is reproduced here under: -

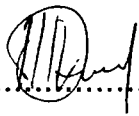
*"A certificate issued by the Director of Public Prosecutions under subsection (2) shall take effect from the date it is fixed in court or notified to the officer in charge of a police station, **and shall remain in effect until the proceedings concerned are concluded or the Director of Public Prosecutions withdraws it.**"*

From the wording of the above provision, there is no life span for the DPP certificate. I therefore do not agree with the applicants' argument that, the time for the DPP certificate expired after sixty days of issue. To the contrary, I do agree with the learned State Attorney that, where the DPP certificate is filed, it remains valid pending trial or where the DPP opt to withdraw the same. In **DPP Vs. Li Ling Ling, Criminal Appeal No. 508 of 2015** (unreported) the Court of Appeal held that;

*".....pending trial under subsection (2) of section 36, if read in the context of sub-section (7) of the same section cannot be taken to have meant to defeat the effect of the latter provision. As **the latter subsection empowers the DPP to file a certificate which when filed as per subsection 3 shall take effect from the date filed in court until the proceedings are concluded or when withdrawn by the DPP.....**"*

There is no doubt that, the DPP filed a certificate objecting the applicants' bail in Economic Case No. 96 of 2019. It is not in dispute that the said Economic case is still pending before the Resident Magistrate Court of

Arusha and the DPP has not withdrawn the certificate issued in objection of the applicants' bail in the same economic case. That being the case, it is my conclusion that the DPP certificate is still valid objecting the applicants' bail. The applicants having withdrawn their application after the certificate was filed objecting their bail, they are precluded from bringing a fresh application while the DPP certificate is still in force. This application is therefore incompetent hence I hereby struck it out.

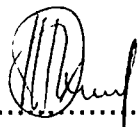
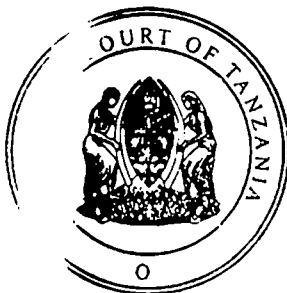


D.C. KAMUZORA

JUDGE

28/07/2021

COURT: Ruling delivered this 28/07/2021 in the presence of the Applicants and Mr. Innocent Rweyemamu, learned State Attorney representing the Respondent, DPP. Right to appeal explained.



D.C. KAMUZORA

JUDGE

28/07/2021