

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO.188 OF 2021.

(Arising from P.I. Case No.8 of 2015 of the Resident Magistrate Court of Dar es Salaam at Kisutu)

DIRECTOR OF PUBLIC PROSECUTIONSAPPLICANT

VERSUS

HARUNA MUSSA LUGEYE.....1st RESPONDENT

MWAJUMBE WENDU BAKARI.....2nd RESONDENT

RULING (EX – PARTE)

MRUMA, J.

On 2nd October 2021, and under a Certificate of urgency certified by Miss. Ester Martin, Senior State Attorney on behalf of Director of Public Prosecutions, the applicant Director of Public Prosecutions, filed this application by way of chamber summons made under sections 34(3), of the Prevention of Terrorism Act No. 21 of 2002 read together with section 188(1)(a)(b)(c)(d) and 188(2) of the Criminal Procedure Act[Cap 20 R.E.2002] as amended. The same was supported by a 14 paragraphs affidavit sworn by Miss. Esther Martin and another affidavit of 12 paragraphs sworn by ASP. JOHN LUGAKINGIRA, a police officer and

investigator of a criminal case facing the Respondents. In the chamber summons a total of three substantive orders are sought which are as follows;

- i. That this court be pleased to order none disclosure of identity and whereabouts of the witnesses for security reasons during committal and trial proceeding,
- ii. That this honourable court be pleased to order none disclosure of the statement and documents likely to lead to the identification of witnesses.
- iii. That this honourable court be pleased to order any other protection measures as the court may consider appropriate for the security of the witnessed.

The affidavits filed in support of the application, advance the reasons for the application and the ground upon which the applicant ask for the orders in the chamber summons.

It is deposed in the affidavit that the respondents and charged before the Resident Magistrates' Court of Dar es Salaam at Kisutu in PI No. 8 of 2015 for offences of conspiracy to commit terrorism and financing terrorism. The offence is alleged to have been committed on diverse dates between 1st January 2011 and 4th December 2014 by entering in illegal agreements and forming a criminal syndicate with other persons not part of this application with the purpose of committing terrorism acts involving the assassination of the Prime Minister of the United Republic of Tanzania one Mizengo Kayanza Pinda. The main intention is said to be seriously destroy fundamental political, constitutional, economic and social structure of the United Republic of Tanzania as move toward

establishment of an Islamic State in the United Republic of Tanzania. In so doing the accused are alleged to have raised funds and obtained weapons from within and outside Tanzania. That, in order to execute their, plan the 1st Respondent contributed the sum of Tanzania Shillings two hundred thousand (Tshs 200,000/=) only to his associate one YAHAYA S/O HASSAN@ Sensei, who is not a part to this application, to facilitate acquisition of weapons. That, on divers' dates between 1st January, 2014 and 4th December, 2014, the 1st Respondent collected hand grenades from the said YAHAYA S/O HASSAN HELA@ Sensei, and the same were kept at premises owned and controlled by the 1st and 2nd Respondents in Dar es Salaam Region. That, the said bombs were acquired for the purpose of facilitating the assassination of Prime Minister of the Republic United of Tanzania one Mizengo Kayanza Pinda. That, the 3rd Respondent on divers' dated between 1st October, 2011 and 30th October 2012 travelled to Mwanza and collected four hand grenades from their associates for the same purposes. That, in the course of dealing with police investigation file relating to P.I. 8/2015, Esther Martin was informed by the investigator of the case one ASP. JOHN LUGAKINGIRA that accused persons acting in corroboration with their associates who are still at large are finding a means to stop the prosecution witnesses from testifying in court during the trial of their case and that they intend to use whatsoever means necessary including infliction of physical harm to the witnesses or their families.

That, the sensitivity and seriousness of the charges against the accused persons and the facts that most of accused persons' associate are still at large, the disclosure of the identities of the intended prosecution witnesses during committal and trial will expose them to risk

of physical harm as stated in paragraph 19 of the affidavit herein. That, it is public interest that the witnesses be protected from harm through non – disclosure of their identity and where about during committal and trial proceedings. That, the investigation in respect of preliminary inquiries case number 8 of 2015 is completed and that the applicants intends to file information against the respondents in the High Court of Tanzania soon after determination of the instant application.

To support their prayers, the Applicants cited several decision of this court and that of the Supreme Court of India including **Misc. Cr. Appl No. 94 of 2019, Misc. Cr. Appl No. 19 of 2020 and Written Petition (Criminal) No. 156 of 2016** of the Supreme Court of India. Those decisions emphasizes the essence to protect witnesses in Criminal cases and they are in para material with section 188(a) (b) (c) (d) of the Criminal Procedure Act at amended by Written Laws Misc. Amendment (No.2) Act No.07 of 2018; which provide that, notwithstanding any other law, before filing a charge or information, or any stage of the proceedings under this Act, the Court, upon ex- parte application by the Director of Public Prosecution order;

- a. N/A
- b. Non- disclosure or limitation as to the identity and whereabouts of the witness, taking into account the security of witness;
- c. Non – disclosure of the statement or documents likely to lead to the identification of witness.
- d. Any other protection measure as the Court may consider appropriate.

The provision above gives discretion powers to the court, upon application by the Director of Public Prosecutions(ex- parte) to give order of non – disclosure of witnesses, the place where they are and may also direct that the trial be conducted in camera or the witness testify through video conference.

I have carefully gone through the application before me the supporting affidavit and the law applicable in this matter. In my considered view, where life of a person called or intended to be called as witness in serious offences such as homicide or offenses involving organize crimes such as this is said to be in danger as a result of volunteering information or being a witness court of law may step in the protection of such witnesses by issuing appropriate orders because witnesses are the eyes and ears of justice.

In an application for orders of protection of witnesses, what the prosecution in required to do is to satisfy the court that there are real danger to the lives of the witness if their identity are disclosed.

Witness protection should never be allowed where it appears that it is intended to delay justice or cause any injustice to the accused persons. That not seen to be the intention in this application.

Having said that, and in view of what have been averred in the supporting affidavit, I am satisfied that on the balance of probability the grant of protection of witnesses in the said pending case may be in the interest of justice. Accordingly I grant the application and order that the identity of the intended witness which includes their whereabouts be withheld.

Similarly I also order non- disclosure of statement of witnesses and documents which may disclose their identity during the committal proceedings.

It is so ordered



A.R. Mruma

Judge

24.1.2022