

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)**

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 27 OF 2021

THE DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT

VERSUS

MOHAMED HASSAN UGANDO 1ST RESPONDENT

RAJABU ALLY MAGAMBO 2ND RESPONDENT

KULWA ATHUMANI WAFILE

@ GHURABAA MKUTU 3RD RESPONDENT

RULING

14th, & 16th March, 2021

ISMAIL, J.

This is an application preferred ex-parte for assorted orders as follows:

- (i) Non-disclosure of identity and whereabouts of the witnesses;*
- (ii) Non-disclosure of statements and documents likely to lead to the identification of witnesses;*
- (iii) That some witnesses should adduce their testimony through video conference;*

- (iv) That trial proceedings be held in camera; and*
- (v) Any other protection measure as the Court may deem appropriate for securing the witnesses.*

The application has been preferred under the provisions of sections 188 (1) (a), (b), (c), (d), 188 (2) and 392A (1) of the Criminal Procedure Act, Cap. 20 R.E. 2019 (CPA), and it is supported by affidavits affirmed by Ramadhani Kalinga, Senior State Attorney at the National Prosecutions Office; and Mkombozi Mhando, a detective police officer in the Zonal Crime Officer's office in Dar es Salaam.

At stake is PI No. 24 of 2016, instituted in the Resident Magistrates' Court of Dar es Salaam at Kisutu, in respect of which investigation is reportedly complete and the respondents are about to be committed to the Court to formally enter a plea to the charges of murder.

The application is predicated on the grounds contained in the supporting affidavits, specifically, paragraph 8 of Ramadhan Kalinga's affidavit, and paragraphs 9, 10 and 11 of Mkombozi Mhando's deposition. The overall contention is that the prospective witnesses are in serious threats to their security from the respondents' criminal syndicate, and that, unless their identities and whereabouts are withheld, their lives and those of their

families will be in grave danger. It is on that basis, that the Court's indulgence is enlisted with a view to having protection measures which include non-disclosure of their identities, their places of abode and such other particulars, including their statements.

In his oral submission in support of the application, the applicant was ably represented by Messrs Nguka Faraji and Yusuph Aboud, both learned State Attorneys. Mr. Faraji revisited the history of the incident that bred the pending proceedings at Kisutu, and that the said incident not only saw the banks lose substantial sums of money and weapons, but also lost three of the banks' personnel. Mr. Faraji contended that members of this criminal syndicate who are still at large are suspected of employing ways of identifying the witnesses with the intention of endangering their lives, or hurling threats in order to intimidate them and subvert the cause of justice. This is why the Court is called upon to grant the orders.

To highlight the importance of exercising the powers bestowed on the Court, Mr. Faraji cited a trio of court decisions in which the Court was moved in similar circumstances and granted the orders similar to those that are the subject of the instant application. These are: ***DPP v. Fundi Hamisi Kamaka @ Fundi Hamisi***, HC-Misc. Criminal Application No. 202 of 2021; ***DPP v. Haruna Mussa I.ugeye***, HC-Misc. Criminal Application No. 188 of

2021; and **DPP v. Yahya Twaha Mpenda & 16 Others**, HC-Misc. Criminal Application No. 88 of 2021 (all unreported).

It was Mr. Faraji's prayer that the orders sought be granted as prayed.

As stated earlier on, the Court is moved to grant the said orders under the provisions of section under the provisions of section 188 (1) and (2) of the CPA. Of mighty significance is section 188 (1) whose substance provides as hereunder:

"Notwithstanding any other written law, before filing a charge or information, or at any stage of the proceedings under this Act, the court may, upon an ex-parte application by the Director of Public Prosecutions, order-

(a) a witness testimony to be given through video conferencing in accordance with the provision of the Evidence Act;

(b) non-disclosure or limitation as to the identity and whereabouts of a witness, taking into account the security of a witness;

(c) non-disclosure of statements or documents likely to lead to the identification of a witness; or

(d) any other protection measure as the court may consider appropriate.

The cited provision has given the Court wide discretionary powers of gauging the condition that obtains on the ground, and make appropriate

orders that are intended to see that proceedings are left to proceed with a minimum of any interruptions, while at the same time ensuring that witnesses are not subjected to any forms of threats and intimidation which may deflect the cause of justice. The issue is whether, the applicant's depositions have provided any material on which the Court may exercise its discretion.

Having unfleetingly reviewed the supporting affidavits and submission made in support of the application, my view is settled that the applicant has raised pertinent and genuine reasons that are sufficient to move the Court to grant protective orders. The depositions have raised reasonable and, in my opinion, genuine fear, of having the respondents' accomplices meddle in the proceedings and subvert the cause of justice. This includes threatening or intimidating prospective witnesses and their families, if their identities and whereabouts or places of abode are made public. I am convinced, therefore, that grant of the said orders is in line with the spirit enshrined in section 188 of the CPA.

In the upshot, I find the application meritorious and I grant it. Accordingly, the following orders are granted:

1. That identity of the witnesses, their whereabouts and their places of abode be withheld from now on and throughout the entirety of the trial

proceedings or subsequent thereto, until it is ascertained that their security is no longer in any form of threat;

2. That names and any particulars in their statements or any of the testimony that has the potential of disclosing identity of the witnesses and their whereabouts be withheld;
3. That the trial proceedings in which the said witnesses are involved be held in camera;
4. That, where necessary, some of the testimony from the witnesses be adduced through video conferencing process; and
5. That the provisions of the law relating to committal proceedings, including sections 246 and 247 of the CPA should be fully conformed to, cognizant of the committal court's duty not to disclose the identity of the witnesses as ordered herein.

It is so ordered.

DATED at **DAR ES SALAAM** this 16th day of March, 2021.


M.K. ISMAIL
JUDGE