

**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. 26 OF 2021

THE DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT

VERSUS

ZAHAQ RASHID NGAI @ MTU MZIMA 1ST RESPONDENT
CHANDE RASHID NJAWI 2ND RESPONDENT
RASHID OMARY MMIGWA @ MMIGWA 3RD RESPONDENT
DUA SAID LINYAMA 4TH RESPONDENT
ISSA ABDALLAHMAN KOKOKO 5TH RESPONDENT

RULING

14th, & 16th March, 2021

ISMAIL, J.

Enabled by 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), this Court is moved to grant a quintuple of orders, all of which are intended to preserve the protection of witnesses. The said witnesses intend to testify in the criminal proceedings emanating from PI No. 52 of 2015, pending in the

Resident Magistrates' Court of Dar es Salaam at Kisutu. Orders sought in the application are as paraphrased hereunder:

- (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.*

Grounds for the prayers sought are set out in the affidavit of Tully James Helela which supports the application. The most relevant part of the deposition is paragraph 12 which states as follows:

"In this case, intended witness (sic) and their families are in danger following threats from the organized criminal syndicate in which the respondents belong"

This deposition tallies with what is stated in paragraphs 9 and 10 of the affidavit of SP. Geoffrey Malembu Simba, both of which provisions aver that the organized criminal syndicate to which the respondents belong are

obstructing justice and instilling fear to witnesses, thereby placing lives of the witnesses and their families in danger.

This position has been restated by Ramadhan Kalinga, learned Senior State Attorney, who maintained that the prayers are all meant to maintain safety and security of the prospective witnesses which are endangered by the ill motive of the respondents' accomplices who are still at large. He argued that similar applications were preferred to this Court and were granted on similar grounds. These include ***DPP v. Haruna Mussa Lugeye & Another***, HC-Misc. Criminal Application No. 188 of 2021; ***DPP v. Fundi Hamisi Kamaka @ Fundi Hamisi***, HC-Misc. Criminal Application No.202 of 2021; and ***DPP v. Abdi Sharif Hassan @ Msomali***, HC-Misc. Criminal Application No. 19 of 2020 (all unreported).

Mr. Kalinga urged the Court to grant the orders as prayed.

The Court is empowered, under the provisions of section 188 of the CPA, to grant orders that conserve safety and security of witnesses in a criminal trial. This discretionary power is exercised where the Court is satisfied that lives of the prospective witnesses are in danger. Such danger must be posed by the disclosure of their identity. The question that arises is whether the material presented in Court is sufficient to trigger exercise of the court's discretion.

My scrupulous review of the affidavits sworn in support of the application and counsel's oral submission provides an affirmative answer to the raised question. The depositions leave no doubt that the intended witnesses carry the greatest responsibility in proving the respondents' alleged culpable role in the charges levelled against them. They are, therefore, a high value target if their identities are left disclosed to all and sundry. Needless to say, they require some enhanced security by withholding their identities and such other information that potentially unveils who they are and where they can be gotten.


In consequence of all this, I grant the application and order as follows:

1. That identity of the witnesses and their whereabouts 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 the statements or any of the testimony that has the potential of disclosing 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 of 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 duty not to disclose the identity of the witnesses as ordered herein.

Order accordingly.

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



M.K. ISMAIL

JUDGE