

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 114 OF 2022

THE DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT

VERSUS

JAFARI HASSAN @MDOE @ ABUU KISHIKI 1ST RESPONDENT
SADICK SHABAN @MDOE @WHITE 2ND RESPONDENT
IBRAHIM ABDALLAH IBRAHIM @ MASUFURIA 3RD RESPONDENT
SAID HAMIS MTULYA @ AL KATAIMI 4TH RESPONDENT
ALLY AYOUB NGINGO @MAHFUDH 5TH RESPONDENT
SAID WAZIRI NKURO @ABUU WALDA 6TH RESPONDENT
JUMA ALLY @HASSAN @ MAKATA 7TH RESPONDENT
SHOMARY SAID NGWAMBI 8TH RESPONDENT
KHATIBU HASSAN HAMIS 9TH RESPONDENT
ISSA HASSAN @JABIR 10TH RESPONDENT
NURDIN SALUM MHAGAMA 11TH RESPONDENT
HAMAD OMARY HAMIS JUMA 12TH RESPONDENT
AHAMAD YUSUF NDULELE 13TH RESPONDENT
HAMIS HUSSEIN RAMADHANI SELEMANI 14TH RESPONDENT
HAMIS MIRAJI HUSSEIN 15TH RESPONDENT
ALLY JUMA NGACHOKA @ ALLY 16TH RESPONDENT
ABDALLAH HAMIS MOHAMED LUPINDO @MZEE 17TH RESPONDENT
ABUDILLAH ISMAIL NDIBALEMA 18TH RESPONDENT
SHABIBU SAM MKUNGU 19TH RESPONDENT
SEIF RAMADHAN SEIF MBWATE 20TH RESPONDENT
HASSAN ABDALLAH @MANDINKI 21ST RESPONDENT
ABDURASHID SAID SADICK 22ND RESPONDENT

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|---|-----------------------------|
| PAULO ABUBAKAR MGITA @ ABUU OSAMA | 23 RD RESPONDENT |
| ABDALLA FAKII MOHAMED | 24 TH RESPONDENT |
| ABBAS AYOUB MKANDA | 25 TH RESPONDENT |
| NASSORO SAID HEMED | 26 TH RESPONDENT |
| RAJABU SELEMANI CHIJEJA @ALSHABAAB | 27 TH RESPONDENT |
| MOHAMED ALLY OMARY | 28 TH RESPONDENT |
| SAID MWINCHANDE MANDANDA | 29 TH RESPONDENT |
| SHAFII SHAIBU MPETENI @ABUU @ABUU TARIQ | 30 TH RESPONDENT |
| TWALIB AHMAD MWALUKA | 31 ST RESPONDENT |

(Arising from Criminal Case (P.I.) No. 2 of 2022 in the Resident Magistrate’s Court of Dar es Salaam at Kisutu)

RULING

2nd and 6th September, 2022

KISANYA, J.:

This *ex-parte* application is made under section 34 (3) of the Prevention of Terrorism Act, No. 21 of 2002 [now R.E. 2022] (the PTA) and section 188 (1) (a), (b), (c), (d) and (2) of the Criminal Procedure Act [Cap. 20 R.E. 2022] (the CPA).

The applicant has moved this Court to be pleased to grant the following orders: -

1. *That, this Honorable Court be pleased to order none disclosure of identity and whereabouts of the witnesses during committal and trial proceedings.*
2. *That, this Honorable Court be pleased to order none disclosure of statements and documents likely to lead to the identification of witnesses during committal and trial proceedings.*
3. *That, some witnesses to give their testimony through video conference.*

4. *That, this Honorable Court be pleased to order trial proceedings to be conducted in camera.*
5. *That, this Honorable Court be pleased to order any other protection measure as the Court may deem fit and appropriate for the security of witnesses.*

The reasons and grounds upon which the applicant prays for the said orders are stated in the affidavits of Faraji Ngukah, learned State Attorney from the National Prosecutions Service and ACP Faustine Mafwele, Zonal Crime Officer, Dar es Salaam Region. Both affidavits were filed to support the chamber summons.

Pursuant to the supporting affidavits, the respondents stand charged with conspiracy to commit an offence (for all respondents), promoting terrorist acts (for the 1st respondent), arranging meeting in support of terrorist acts (for the 1st, 8th, 21st and 23rd respondents), provision of property for commission of terrorist acts (for the 16th respondents), collection of funds to commit terrorist acts (for the 6th, 7th, 11th, 13th, 17th, 22nd, 23rd and 28th respondents) and recruiting of persons to participate in the commission of terrorist acts (for the 6th respondent). It is also deposed that, the investigation has perceived that the lives of prospective witnesses and their families are at imminent risk due to threats and intimidations from the respondents' allies who are still at large. On the foregoing, the prosecution was forced to file the present application for the foresaid orders.

When this matter came up for hearing, the applicant was represented by Mr. Ramadhan Kalinga, learned Senior State Attorney.

Submitting in support of the application, Mr. Kalinga adopted the facts deposed in the supporting affidavits to form part of his submission. He then prayed for this Court to grant the application basing on the reasons and grounds averred in both affidavits. The learned counsel relied on the case of **DPP vs Said Bakari Mawazo and 10 Others**, Misc. Criminal Application No. 50 of 2020 in which this Court granted similar application basing on the grounds and facts akin to the case at hand.

Having heard the submission made by the learned Senior State Attorney and examined the chamber summons and supporting affidavits, the issue for determination is whether the application is meritorious.

I have hinted earlier on, this application is made under section 34 (3) the PTA read together with section 188(1) and (2) of the CPA. Both provisions empower this Court, on an ex-parte application by the DPP, to make orders aimed at protecting witnesses. For instance, section 188 (1) and (2) of the CPA stipulates as follows:-

"188.- (1) 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;*
- (d) any other protection measure as the court may consider appropriate.*

(2) Where the court orders for protection measures under paragraph (b) and (c) of subsection (1), relevant witness statements or documents shall not be disclosed to the accused during committal or trial"

Reading from the above cited provision, it is clear that this Court has discretionary powers of considering the application and making necessary orders for purposes of ensuring that the witnesses are protected. I also subscribe to the observation made by my learned brother, Hon. Ismail, Judge in the case of **DPP vs Mohamed Hassan Ugando**, Misc. Criminal Application No. 27 of 2021, HCT at DSM (unreported), that the above cited provision is aimed at ensuring proceedings are left to proceed with minimum interruptions and at the same time

safeguarding witnesses from threats which may defeat the cause of justice. In the case of **DPP vs Said Bakari Mawazo** (supra), this Court held the view that the primary consideration in determining application of this kind is whether the witness's life or safety would be in danger if protection measures leading to his or her identity are not provided for.

I have also stated earlier that this application is premised on the ground that the lives of potential witnesses and their families are at imminent risk due to threats and intimidations from the respondents' allies who are still at large. Considering further the nature of the offence laid against the respondents, I am of the view that the applicant has advanced a sufficient ground deserving this Court to grant the application in line with the spirit stated in the above cited provisions.

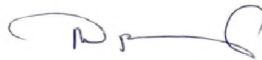
That said and done, I find merit in this application. Consequently, I proceed to grant it and order as follows: -

1. The identity and whereabouts of the witnesses be withheld during committal and trial proceedings, until it is ascertained that their security is no longer in any form of threat.
2. That names and particulars in the statements and documents likely to lead to the identification of witnesses be withheld during committal and trial proceedings.

3. That where need arises, some witnesses be allowed to give evidence through video conferencing.
4. That the trial proceedings in which the said witnesses are required to give evidence be conducted in camera

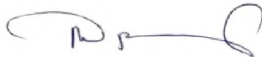
It is so ordered.

DATED at DAR ES SALAAM this 6th day of September, 2022.



S.E. Kisanya
JUDGE

Court: Ruling delivered this 6th day of September, 2022 in the presence of Mr. Ramadhan Kalinga, learned Senior State Attorney for the applicant and in the absence of the respondents.



S.E. Kisanya
JUDGE
06/09/2022