

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

**AT DAR ES SALAAM**

**MISC. CRIMINAL APPLICATION NO. 148 OF 2020**

(Arising from the decision of the High Court of Tanzania at Dar es salaam delivered on  
07<sup>th</sup> May 2019 in Misc. Criminal Application No. 42 of 2019)

**MEHBOOB GULAMHUSSEIN DHARAMSI.....1<sup>ST</sup> APPLICANT**

**MARZIYABEN MEHBOOB DHARAMSI.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTIONS.....1<sup>ST</sup> RESPONDENT**

**JACKSON SIFAEEL MTARES.....2<sup>ND</sup> RESPONDENT**

**DOMINICK KIGENDI.....3<sup>RD</sup> RESPONDENT**

**TIMOTHEO SAIGURAN OLE LAITG'NYE.....4<sup>TH</sup> RESPONDENT**

**SAMWEL SIFAEEL MTARES.....5<sup>TH</sup> RESPONDENT**

**TREASURY REGISTRAR.....6<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL.....7<sup>TH</sup> RESPONDENT**

**RULING**

*Date of last Order: 29<sup>th</sup> August, 2022*

*Date of Ruling: 07<sup>th</sup> October, 2022*

**E.E. KAKOLAKI J.**

Before this Court in its ruling handed down on 07/05/2019, in Misc. Criminal Application No. 42 of 2019, between the Director of Public Prosecutions (DPP) and 2<sup>nd</sup>,3<sup>rd</sup>,4<sup>th</sup> and 5<sup>th</sup> respondents herein, the Court ordered for forfeiture of all tainted properties applied for to the Government, including

landed property in Plots No. 2/2 & 3/2 Block 'E' Mabibo, Kinondoni, Dar es salaam. The above cited application and forfeiture orders were made against the properties acquired by the 2<sup>nd</sup>,3<sup>rd</sup>,4<sup>th</sup> and 5<sup>th</sup> respondents herein as shareholders and directors of DECI (Tanzania) Limited following conviction and sentence meted on them on the offence of Managing and Conducting Pyramid Scheme in Criminal Case No. 109 of 2009, before the Resident Magistrates Court of Dar es salaam at Kisutu. It appears the applicants who claim to be legal owners of the said property in Plots No. 2/2 & 2/3 Block 'E' Mabibo, Kinondoni Dar es salaam were not aware of the forfeiture order of this Court against their properties until 26/02/2020 when approached by officers of the 1<sup>st</sup> and 6<sup>th</sup> respondents informing them of the confiscation of their property to the Government.

Acting under shock the applicants instructed their lawyer to make a follow up of the Court's orders from the DPP's office and later on court proceedings, ruling and drawn order from this Court, the documents which were supplied to them on 10/03/2020, hence the present application moving this Court to grant them with leave to apply for the transfer of an interest on Plots No. 2/2 & 2/3 Block 'E' Mabibo area to their names by the 6<sup>th</sup> respondent. The chamber summons is preferred under section 16(8) of the Proceeds of

Crimes Act, Cap. R.E 2019] (the POCA) and supported by joint affidavit dully affirmed by both applicants. The application is strenuously resisted by the 1<sup>st</sup>,6<sup>th</sup> and 7<sup>th</sup> respondents who filed a joint counter affidavit to that effect, as the 2<sup>nd</sup>,3<sup>rd</sup>,4<sup>th</sup> and 5<sup>th</sup> respondent did not enter appearance to defend the application even after service was effected to them by way of publication of summons in the newspapers of Mwananchi dated 02/07/2021, 07/08/2021, 12/09/2021, the Citizen of 08/09/2021 and Daily News of 06/08/2021.

When the matter came for hearing the applicant appeared represented by Mr. Mashaka Ngole, learned advocate while the 1<sup>st</sup>,6<sup>th</sup> and 7<sup>th</sup> respondent defended by Ms. Jacqueline Nyantori and Ms. Estazia Wilson, both learned State Attorney. As alluded to above the 2<sup>nd</sup>,3<sup>rd</sup>,4<sup>th</sup>, and 5<sup>th</sup> respondent defaulted appearance hence hearing proceeded in their absence.

Submitting in support of the application while adopting the joint affidavit by the applicants to form part of his submission Mr. Ngole informed the Court that, in determination of this application for leave to apply for transfer of interest on property preferred under section 16(8) of POCA, two tests are to be applied by the Court. One, he mentioned to be applicant's interest over the property and second, whether the delay to file the application within six (6) months of the issue of forfeiture order resulted from or is associated to

the applicants negligence. According to him the period of six (6) months within which to apply for transfer of interest on the property by the applicant against the forfeiture order which was issued by this Court on 07/05/2019 lapsed on 06/11/2019. He said the applicants could not file the application timely as were not aware of the same for not being party to the application that bred the said order. As regard to the applicants' interest over the property subject of this application Mr. Ngole echoed that, as per paragraphs 1 and 2 of the affidavit together with the title deed annexed thereto, the applicants are lawful joint owners of the land in dispute having purchased the same on 12/08/2014 from one Adam Haji Mkumbo, who was never charged in Criminal case that resulted into the forfeiture order nor the respondent in the forfeiture application. He added that, the said Adam Haji Mkumbo is not amongst the directors or shareholders of DECI whose properties were subjected to forfeiture orders. It was his submission therefore that, there is no way the applicants could have been made aware of the issued forfeiture order against them hence not acted negligently to bring an application for transfer of interest within six (6) months as required by the law.

Touching the 1<sup>st</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents' counter affidavit on the issued Notice in pendency of the forfeiture application in Court, Mr. Ngole argued, the same was made against the parties to such Criminal Application No. 52 of 2019. Secondly he said, the period of six (6) months for filing the application under section 16(2) does not run from the date of publication of Notice which is 20/02/2019 but rather the date of issue of forfeiture order which is 07/05/2019, thus the issue of Notice in this matter is inapplicable. In his view, when exercising its power this Court has a duty even if it means to extend time for the purposes of determining or ascertaining the point of illegality so as to take necessary measures to put right the record. With that length submission Mr. Ngole implored this Court to grant the applicants with leave to apply for transfer back their property into their names on the ground that it was wrongly forfeited to the Government on beliefs that it was belonging to DECI owners which is not the case.

Retorting the applicants' submission Ms. Nyantori while adopting the joint counter affidavit and admitting the submission by Mr. Ngole that this application was to be filed within six (6) months of the issue of forfeiture order, she argued the applicants have not shown good cause warranting this Court exercise its discretion to grant their prayer. Citing the case **Bonface**

**Alistedes Vs. R**, Criminal Application No. 06/08 of 2019 to support her stance on the requirement of the applicant to advance good cause she roared, several factors have to be considered by the Court including the length of delay, reasons for the delay, whether or not the application has been brought promptly and lack of diligence on the part of the applicants. In her view, the applicants' delay to make this application within six (6) months' time was due to negligence on their part since the forfeiture order was issued on 07/05/2019 and this application preferred on 26/08/2020, one year and three (3) months passed, and that inordinate period was never accounted for by the applications. Reliance was place on the cases of **Boniface Alistedes** (supra) and **John Dongo and 3 others Vs. Lepasi Mbokoso**, Civil Application No. 14/01 of 2018 (CAT-unreported). She argued, the applicants' assertion in paragraph 12 of the joint affidavit that were not notified of the forfeiture application by the DPP is not true as Notice was made through publication in Daily newspaper of 06/03/2019 as per the requirement of section 10(1)(a) of POCA. She said, the notice is not issued against the person but the tainted property in which the DPP's notice complied with.

As regard to the submission by Mr. Ngole that non-joinder of applicants or Adam Haji Mkumbo in the application for forfeiture of tainted properties, Ms. Nyantori countered that, that is not a requirement of the law as the requirement is notification of all interested parties as it was discussed in the case of **Jackson Sifael Mtares and 3 others Vs. DPP**, Criminal Appeal No. 180 of 2019 (CAT) which was involving the 3<sup>rd</sup> respondent. With regard to the case of **Amour Salim** (supra) relied on by the applicants she distinguished the same arguing that, it was addressing extension of time on the ground of illegality which is not the ground in the present matter.

In concluding her submission the learned State Attorney urged this Court to be guided by the provision of section 16(3) of POCA when determining this application to see whether the applicant has demonstrated any special ground warranting this Court grant the application as the grounds advanced by the applicants are merely afterthought. She thus prayed the Court to dismiss the application for want of merit.

In his brief rejoinder Ms. Ngole submitted that, the grounds for consideration under section 16(3) of the POCA and section 16(8) of the same Act are different as under section 16(8) of POCA the court has to consider whether the applicant was negligent or not, while under section 16(3) of the Act the

Court has to look on existence of special circumstances for the grant of the application. As regard to the issue of Notice he replied, the DPP is required under section 10(1) of the POCA to issue Notice to persons with interest to the property intended to be forfeited, in which the one issued in the present matter did not cover the applicants. Hence the applicants cannot be condemned to be negligent to delay in filing the application for transfer of interest to them for not being aware of the forfeiture order. As regard to the cited cases by the respondents Mr. Ngole said, all are inapplicable in this matter as in this matter, the Court is not to look on the delayed period but rather whether the applicants were negligent or not in filing the application. He added, applicants therefore are not required to account for the delayed period rather when they become aware of the order and whether they acted negligently or not. Mr. Ngole finally invited this Court to find the application with merit and grant the same.

I had an ample time to internalize and analyse the fighting submissions by counsels both parties. I also took time to revisit the affidavit, counter affidavit, the provisions of the law (POCA) under which this application has been preferred as well as the cited authorities by the parties. It is gathered from the submissions that, parties are at one on the fact that the application



for transfer of property interest to the applicant under section 16(8) of the POCA, has to be brought within six (6) months from the date of issue of the forfeiture order. It is also uncontroverted fact that, in this matter the said forfeiture order was issued on 07/05/2019 and therefore the time for filing of the said application by the applicant lapsed on 06/11/2019. It is further undisputed fact that, this application for leave to apply for transfer back from the Treasury Registrar applicants' interest in respect of property in Plots No. 2/2 and 2/3 located at Mabibo area formerly within Kinondoni District but now Ubungo District, Dar es salaam Region, has been brought under section 16(8) of the POCA, which was dully filed on 26/08/2020, more than one year and three (3) months from the date of issue of forfeiture by this Court and more than eight (8) months from the last date of filing the application which was 06/11/2019. What brings them into head-to-head fight is the issue as to what are the tests to be applied for this Court to grant or refuse to grant the application of this nature.

Mr. Ngole is arguing that, two factors have to be established by the applicant. One, whether he has an interest in the forfeited property whose interests are sought to be transferred back and second, whether the delay in filing the application for transfer of interest within six (6) months is not associated

with applicant's negligence. Thus, the applicant is not required to account for the delayed period. Ms. Nyantori is of the contrary view submitting that, the applicant has to account for each and every day of delay and further to that the Court has to satisfy itself that there are special grounds for granting the application as provided under section 16(3) of the POCA. In order to disentangle the parties' dispute I find it worth reproducing the provisions of section 16 (3), (4)(7) and (8) of POCA which reads:

*(3) A person who was given notice of an application for a forfeiture order or who appeared at the hearing of the application shall not make an application to court in terms of subsection (2) except with the leave of the court.*

*(4) The leave of the court referred to in subsection (3) may be granted if the court is satisfied that there are special grounds for granting the leave.*

*(7) Subject to subsection (8), an application under subsection (2) shall be made before the expiration of a period of six months commencing on the day on which the forfeiture order is made.*

*(8) Where a forfeiture order is made against property, the court that made the order may, on application being made to it, grant **a person claiming an interest in the property** leave to apply in terms of subsection (2), after the expiration of the period referred to in subsection (7) if it is **satisfied that***

***the person's failure to make his application within that period was not due to any neglect on his part.***

Having considered the above provisions, I find it to be true and therefore agree with Mr. Ngole's proposition that, in an application for leave to apply for transfer of interest in the property under section 16(8) of the POCA, the applicant has to establish two things. **One**, the interest claimed in the property and **second**, that he acted diligently and not negligently when failed to apply for transfer of his interest within six (6) months of the issue of forfeiture order. I only differ with him on his submission that, the applicant does not have to account for the period delayed as there is no way he can satisfy the Court of acting diligently and not negligently without the Court gauging as to whether or not the application was brought promptly and whether there is any or valid explanation for the delay. See the case of **Bonface Alistedes** (supra), **John Dongo** (supra), **Bushiri Hassan Vs. Latifa Lukio, Mashayo**, Civil Application No. 3 of 2007, **CRDB (1996) Limited Vs. George Kilindu**, Civil Appeal No 162 of 2006 (CAT Unreported) and **The International Airline of the United Arab Emirates Vs. Nassoro**, Civil Application No 263 of 2016, (CAT Unreported). It was held in **CRDB (1996) Limited** (supra) that:

*"...sufficient cause may include, among others, bringing the application promptly, valid explanation for the delay and lack of negligence on the part of the applicant."*

Similarly in the case of **The International Airline of the United Arab Emirates** (supra) the Court of Appeal observed that:

*"In order for the court to establish whether there was a good cause or sufficient reason, depends on whether the application for extension has been brought promptly as well as whether there was diligence on the part of the applicant."*

*"...sufficient cause may include, among others, bringing the application promptly, valid explanation for the delay and lack of negligence on the part of the applicant."*

From what I have endeavoured to demonstrate above, I tend to agree with Ms. Nyantori that, for this Court to grant leave to apply for transfer of interest in property under section 16(8) of the POCA, the applicant has to show sufficient cause which includes accounting for each and every day of delay as rightly expressed in the relied on cases of **Bonface Alistedes** (supra) and **John Dongo** (supra), the higher court's decisions which I find to be applicable in this case. As regard to the case of **Amour Habib Salim** (supra) relied on by Mr. Ngole, I find the same to be inapplicable in this matter as

illegality of the decision does not constitute factors for consideration for the grant of the sought leave.

With regard to the submission by Ms. Nyantori that his court has also to consider whether there are special circumstances established by the applicants herein, with due respect to the learned State Attorney, I disassociate myself from that proposition. The reason I am so doing is not far-fetched as the requirement for this Court to satisfy of existence of special grounds for granting leave under section 16(4) of the POCA, refers to leave sought under section 16 (2)(3) and (6) of the POCA, for exclusion of interest in the property by the applicant who was issued with the Notice or appeared at the hearing of the application for forfeiture but for due to special ground failed to prefer the application within specified time and not for the person who claims not to be aware of existence of the forfeiture order at the time of its issue.

Having so settled the legal, position let me turn back to consider the present application in which the applicants are duty mandated to establish their interest in the landed property and establish to the Court's satisfaction that, they did not act negligently in delaying to file the application from

07/05/2019 when the forfeiture order was issued up to the time of filing this application on 26/08/2020.

As regard to the first factor, this Court is satisfied that, through paragraph 1 and 2 of the affidavit and annexure NL-1 to it (the title deed), the applicants have managed to exhibit to the Court's satisfaction that, they have an interest in that property for purchasing it and paying land rent. With regard to the second factor, as to whether the applicants' failure to file the application for transfer of interest of their property was associated with their negligence, it is not in dispute as alluded to above the applicants are to account for the delay of more than eight (8) months from 06/11/2019 when six months within which to file the application lapsed up to 26/08/2020 when this application was filed. It is stated by the applicants in paragraphs 4, 6 and 10 of their affidavit that, they came into knowledge of the forfeiture order when informed by the DPP and Treasury Registrar's officers on 26/02/2020, before they instructed their lawyers to make a follow up of the copies of proceedings, ruling and drawn order which were supplied to them on 10/03/2020. Assuming the period from 06/11/2019 when the time to lodge the application for transfer of interest on property lapsed up to 10/03/2020, when the necessary documents were obtained after full

knowledge of existence of forfeiture order is excluded, still the period of more than five (5) months from 10/03/2020 up to 26/08/2020 when the application was filed, is not accounted for and there is no valid explanation for such inordinate delay. This is a clear manifestation and proof of appellants' negligence in prosecuting this matter which goes against the dictates of the provision of section 16(8) of the POCA, calling for the applicants to satisfy the Court that, they acted not in neglect of the law. I therefore find, the applicants acted negligently and without diligence in pursuing this matter as rightly submitted by Ms. Nyantori, hence failed to meet the thresholds for the grant of leave as provided under section 16(8) of POCA and lucidly elaborated in the cases of **CRDB (1996) Limited** (supra), **The International Airline of the United Arab Emirates** (supra), **John Dongo** (supra) and **Bonface Alistedes** (supra).

In the premises and for the fore stated reasons this application is devoid of merit and the same is hereby dismissed.

It is so ordered.

Dated at Dar es salaam this 07<sup>th</sup> day of October, 2022.



E. E. KAKOLAKI

**JUDGE**

07/10/2022.

The Ruling has been delivered at Dar es Salaam today 07<sup>th</sup> day of October, 2022 in the presence of the Mr. Masuna G. Kunju, advocate for the applicants, and Ms. Monica Msuya, Court clerk and in the absence of all respondents.

Right of Appeal explained.



E. E. KAKOLAKI

**JUDGE**

07/10/2022.

