

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**MISC. CRIMINAL APPLICATION NO. 13 OF 2022**

(C/O Sumbawanga Resident Magistrates' Court Committal Case No. 2 of 2022)

**DIRECTOR OF PUBLIC PROSECUTIONS ..... APPLICANT**

**VERSUS**

**AYOUB S/O MAULID SAID ..... RESPONDENT**

**RULING**

Date: 05 & 11/04/2022

**NKWABI, J.:**

In this application, the applicant is essentially seeking orders for protection of witnesses under section 34(3) of the Prevention of Terrorism Act No. 21 of 2002 read together with sections 188(1)(a), (b), (c), and (d) of the Criminal Procedure Act, [Cap. 20 R.E. 2019]. The orders sought are clearly spelt out in the chamber summons. I wish to reproduce them:

1. That this Honourable Court be pleased to order that witnesses testimony to be given through video conference in accordance with the provisions of the Evidence Act, [Cap. 6 R.E. 2019].
2. That, this Honourable Court be pleased to order none disclosure of identity and whereabouts of the witnesses for security reasons during committal and trial proceedings.

3. That, this Honourable Court be pleased to order none disclosure of statements and documents likely to lead to the identification of witnesses for their security reasons during committal and trial proceedings.
4. That, trial proceedings in respect of Committal Case No. 2 of 2022 to be conducted in camera;
5. Any other protection measure as the Court may consider appropriate for the security of the prosecution witnesses in respect of Committal Case No. 2 of 2022, including but not limited to:-
  - (a) Prohibition on dissemination and publication of documentary evidence and any other testimony bearing identity of prosecution witnesses without prior leave of the court.
  - (b) Prohibition on dissemination and publication of information that is likely to disclose location, residence and whereabouts of the prosecution witnesses or any of their close relatives.

The chamber summons is made under the provisions of the laws I have indicated above. It is supported by the affidavits duly sworn by Mr. Simon P. Peres, learned Senior State Attorney and that appears to be of Eng. Aziz Said Kimatta, SP the Regional Crimes Officer for Rukwa region.

The most relevant averments in both affidavits of the applicant are that the respondent was handed over to Tanzania authorities on 18<sup>th</sup> May 2015 after having been arrested in Kenya on suspicion of heading to Somalia to join Al-Shabab which is based therein. On interrogation he admitted that he was heading to Somalia for that mission. The aim was to attain advanced military practical training in order to overthrow the lawful Government of the United Republic of Tanzania through violence means and establish an Islamic State.

That the respondent and his associates who are at large intends to use whatever means necessary including but not limited to infliction of physical harm upon the intended prosecution witnesses in order to stop them from testifying in court against the respondent.

It is based on sensitivity and seriousness of the charges against the respondent and most of the respondent's associates are still at large, disclosure of the identities of the intended prosecution witnesses during committal and trial will expose the witnesses to the risk of physical harm.

Further it is in public interests that witnesses are protected from harm through nondisclosure of their identity and whereabouts during committal and trial proceedings.

In the affidavit that seems to be sworn by the Regional Crimes Officer as said above, it is avowed that the respondent and his associates who are still at large are working hard to get the identities of the intended witnesses of the prosecution in order to impede them from testifying in court against the respondent during trial.

When the matter was called up for hearing, the applicant was ably represented by Mr. Simon Peres, learned Senior State Attorney. The respondent did not appear as it is an ex-parte application. In the course of the hearing, Mr. Peres for the applicant adopted the contents of both affidavits and the prayers in the chamber summons. He then pressed this court to grant the application to ensure safety of witnesses.

I have closely considered this application, in my view, the application has to fail because the application is based on an incompetent affidavit. The affidavit of the Regional Crimes Officer for Rukwa region is incompetent

because it was not sworn by the Regional Crimes Officer himself but it was sworn by someone on behalf of him that is why it bears a mark that shows that it was not signed/sworn by the Regional Crimes Officer himself. Now, since the affidavit of Mr. Peres in respect of the vital information/point that, *"that the respondent and his associates who are at large intends to use whatever means necessary including but not limited to infliction of physical harm upon the intended prosecution witnesses in order to stop them from testifying in court against the respondent."* is based on incompetent affidavit the same lacks substance for sustainability of this application. In the circumstances. The application is bound to be struck out for the reason that the attestation of the Regional Crimes Officer for Rukwa region is irregular hence rendering the application incompetent.

In the premises this application is found to be incompetent. It is struck out.

It is so ordered.

**DATED at SUMBAWANGA** this 11<sup>th</sup> day of April 2022.



**J. F. NKWABI**  
**JUDGE**

