

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

**(SUMBAWANGA DISTRICT REGISRTY)**

**AT SUMBAWANGA**

**MISC. CRIMINAL APPLICATION NO. 16 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: 14 & 14/04/2022

**NKWABI, J.:**

The applicant, in this court, is seeking for 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 vividly listed 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 shown above. It is supported by the affidavits duly sworn by Mr. Simon P. Peres, learned Senior State Attorney and that of Eng. Aziz Said Kimatta, SP the Regional Crimes Officer for Rukwa region.

The crucial 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 the conviction of the applicant that 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 was duly sworn by the Regional Crimes Officer as said above, it is averred 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 dexterously represented by Mr. Simon Peres, learned Senior State Attorney. The respondent did not appear on the account that this is an ex-parte application. During the hearing, Mr. Peres for the applicant, duly adopted the contents of both affidavits and the prayers in the chamber summons. He then prayed this court to grant the application to ensure safety of witnesses in the intended trial against the respondent.

I have closely considered this application, in my view, the application has to succeed because there is sufficient evidence on the record that the

respondent and his associates who are still at large would harm the witnesses and or their relatives if such witnesses are disclosed.

It is indeed in public interest that if offences are committed, the perpetrators should be brought to justice. That will only be attained in the circumstances where witnesses are not exposed to any kind of harm, that is possible where such witnesses are duly protected.

In the upshot, the application is granted. The following orders are issued by this court:

1. Witnesses' testimonies shall be given through video conference in accordance with the provisions of the Evidence Act, [Cap. 6 R.E. 2019].
2. I order for none disclosure of identity and whereabouts of the witnesses for security reasons during committal and trial proceedings.
3. I order for none disclosure of statements and documents likely to lead to the identification of witnesses for their security reasons during committal and trial proceedings.
4. Trial proceedings in respect of Committal Case No. 2 of 2022 shall be conducted in camera;


5. I order for other protection measures as which I consider appropriate for the security of the prosecution witnesses in respect of Committal Case No. 2 of 2022, including:-

(c) Prohibition on dissemination and publication of documentary evidence and any other testimony bearing identity of prosecution witnesses without prior leave of the court.

(d) 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.

It is so ordered.

**DATED** at **SUMBAWANGA** this 14<sup>th</sup> day of April 2022.



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

