

**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. 50 OF 2022

THE DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT

VERSUS

SAID BAKARI MAWAZO 1ST RESPONDENT
MUSSA HASSAN SINANI 2ND RESPONDENT
HAMAD MUSSA NANJALATA SINGWINGWI 3RD RESPONDENT
PAULO ABUBAKARI MGITA @ ABU OSAMA 4TH RESPONDENT
HUSSEN ALLY HUSSEN @SHEHE HUSSEN 5TH RESPONDENT
BAKARI JUMA MSHAURI 6TH RESPONDENT
ATHUMAN KHAMIS @ KIDUNDA 7TH RESPONDENT
SWEDI ANWARI @ HATIBU @MAKENZI 8TH RESPONDENT
OMARY BANDARI MSHAMU MNIHA @KUNDECHA 9TH RESPONDENT
MBARAKA ISMAIL MTUHIMUBA 10TH RESPONDENT
ABDALLAH MUSSA FUNDI 11TH RESPONDENT

**(Arising from P.I Case No. 3 of 2020 in the Resident Magistrate's
Court of Kibaha at Kibaha)**

RULING

19th and 23rd May, 2022

KISANYA, J.:

The applicant herein filed an *ex-parte* application preferred under section 34 (3) of the Prevention of Terrorism Act, No. 21 of 2002 read together with section 188 (1) (a), (b), (c), (d) and (2) of the Criminal Procedure Act [Cap. 20 R.E. 2019] (the CPA) seeking the following orders:

1. *That, this Honorable Court be pleased to order that witness testimony to be given through video conference in accordance with the provisions of the Evidence Act [Cap. 6, R.E. 2019]*
2. *That, this Honorable Court be pleased to order none (sic) disclosure of identity and whereabouts of the witnesses for security reasons during committal and trial proceedings.*
3. *That, this Honorable Court be pleased to order none (sic) disclosure of statements and documents likely to lead to the identification of witnesses for security reasons during committal and trial proceedings.*
4. *That, the trial proceedings in respect of Preliminary Inquiry PI case No. 03 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 Preliminary Inquiry (PI) Case No. 03 of 2022 including but not limited to:-*
 - (a) *Prohibition on dissemination and publication of documentary evidence and without other testimony identity of prosecution witnesses without prior leave of the court.*
 - (b) *Prohibition and dissemination and publication of information that is likely to disclose location, residence and whereabouts of the publication witnesses or any of their close relatives.*

Supporting the application are affidavits of Edgar Evarist Bantulaki, learned State Attorney from the National Prosecutions Service and ACP Isaya Mbugi, Regional Crimes Officer, Coastal Region.

A brief account of what led to the application is gathered from the supporting affidavits as follows. In the night of 21st January, 2015, the Ikwiriri Police Station in Rufiji was invaded by a large group of organized persons armed with several firearms of military grades, manufactured bombs, machetes and knives. They fired toward the Police Station which was guided by two police officers who managed to flee. Thereafter, the armed persons entered the police station compound. They assaulted and murdered two police officers found therein, before breaking the armory in which several firearms and other properties were stolen.

Following an investigation conducted by the police, the respondents were arrested on different dates and locations. Some of them confessed to have committed the offence and named the co-respondents. They were arraigned before the Resident Magistrate's Court of Kibaha at Kibaha for several offences under the Prevention of Terrorism Act, No. 21 of 2002 as amended. The said charges are conspiracy to commit terrorism act (for all respondents), provision of funds to commit terrorism acts (for 2nd applicant), use of property for commission of terrorism acts (for 2nd and 3rd respondents), participating in committing a terrorist act (for all respondents) and murder (for all respondents).

It is alleged that, in the course of investigating the case, the police detected that the respondents acting in corroboration with their associates are struggling to get identity of the intended prosecution witnesses. Since the respondents have not been committed to this Court, the applicant was inclined to file the present application for the above named orders.

At the hearing of this application, the applicant was represented by Mr. Ramadhan Kalinga, learned Senior State Attorney.

In his submission in support of the application, Mr. Kalinga adopted the chamber summons and affidavits in support of application. He was of the view that, on the strength of reasons deposed in the supporting affidavits, there is a need for this Court to grant the order for protection of witnesses as prayed in the chambers. He urged this Court to consider the cases of **DPP vs Mbwana Suleiman Puga**, Misc. Criminal Application No. 25 of 2022, HCT AT Mwanza (unreported) and **Jean-Paul Akayesu**, Case No. ICTRY-96-4-1.

I have considered the Senior State Attorney's submission and keenly gone through the chamber summons and affidavits in support of the application. As indicated earlier, this Court is called upon to grant orders that aim at protecting witnesses to be called by the prosecution to prove the case against the respondents.

As far as offence under the Prevention of Terrorism Act (supra) is concerned, measures for witness protection are provided for under section 34 of the said Act as amended by the Written Laws (Miscellaneous Amendments) (No.2) Act, 2018 which reads as follows:-

"(3) A Court may, on an ex-parte application by the Director of Public Prosecutions, order that the case proceeds in a manner stated in section 188 of the Criminal Procedure Act."

Now, section 188 (l)(a), (b), (c) and (d) and (2) of the CPA referred to in the above provisions is quoted hereunder:-

"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"

From the foregoing provisions of law, I am satisfied that this Court has powers to entertain the application for witness protection. In determining such application, the primary consideration 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. See also the case of **DPP vs Mbwana Suleiman Puga** (supra) in which her ladyship, Masabo, J, had this to say on the matter under consideration:-

"...this provision has been tested in a number of cases in our jurisdiction. There exist a number of authorize from other jurisdiction and international tribunal/ and courts. I thus have had time to read some of the authorities. In my observation they all converge that much as witness protection in criminal proceedings has become crucial and inevitable, it involves a balancing act between the two competing interested above stated and this is done by considering a number of factors. The overriding of these factors is life and wellbeing of the witness. A court entertaining the application for protection measure should critically consider whether the life or safety of the witness would be endangered as a result of being witness."

I fully associate myself with the above stance. It is gleaned from the supporting that the offences laid against the respondent are said to have been committed by a group people whereby, some of them are yet to be arrested. It was further deposed that the investigation had revealed that the respondents' allies intend to employ means that endangers the life and safety of the intended prosecution witnesses and their family members. That being the case, I am satisfied that the applicant has advanced a *prima facie* case warranting this Court to grant the application for protection of witnesses.

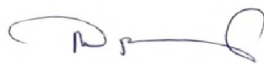
In the event, I hereby grant the application in the following terms:

1. The identity and whereabouts of the prosecution witnesses shall not be disclosed during committal and trial proceedings.
2. The statements and documents likely to lead to the identification of prosecution witnesses shall not be disclosed during committal and trial proceedings.
3. The following protection measures be observed during committal and trial proceedings:
 - (a) No dissemination and publication of documentary evidence and any other testimony bearing identity of prosecution witnesses without prior leave of the court.

- (b) No dissemination and publication of information that is likely to disclose location, residence and whereabouts of the prosecution witnesses or any of their close relatives.
- (c) It is ordered that prayers number 1 and 4, on the hearing of the case through video conference or in camera be made for consideration and determination during the trial. However, the committal proceedings in respect of Preliminary Inquiry PI case No. 03 of 2022 shall be conducted in camera.

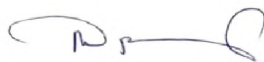
It is so ordered.

DATED at DAR ES SALAAM this 23th day of May, 2022.



S.E. Kisanya
JUDGE

Court: Ruling delivered this 23rd day of May, 2022 in the presence of Mr. Ramadhan Kalinga, learned Senior State Attorney for the applicant and in the absence of the respondents. B/C Bahati present.



S.E. Kisanya
JUDGE
23/05/2022