

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

MISCL. CRIMINAL APPLICATION NO. 24 OF 2023

**(In Criminal Session Case No. 11 of 2023 in the High Court of Tanzania at Dar
es Salaam originating from PI case No. 8/2016 of the Resident Magistrate
Court of Dar es Salaam Region at Kisutu)**

DIRECTOR OF PUBLIC PROSECUTIONS.....APPLICANT

VERSUS

- 1. OMARI ABDULLA MAKOTA.....1st RESPONDENT**
- 2. RAJABU ALLY MOHAMED ULATULE.....2nd RESPONDENT**
- 3. RAMADHANI HAMIS LUKWEMBE.....3rd RESPONDENT**
- 4. FADHIL SHABAN LUKWEMBE.....4th RESPONDENT**
- 5. ALLY MOHAMED SALUM USO WA SIMBA @ ULATULE.....5th RESPONDENT**
- 6. KHAMIS MOHAMED SALUM USO WA SIMBA @ ULATULE ..6th RESPONDENT**
- 7. NASSOROSELEMAN ABDALA ULATULE.....7th RESPONDENT**
- 8. SELEMAN ABDALA SALUM USO WA SIMBA @ ULATULE ...8th RESPONDENT**
- 9. SAID MOHAMED SALUM USO WA SIMBA @ ULATULE9th RESPONDENT**
- 10. SAID ABDULLAH CHAMBETA.....10th RESPONDENT**
- 11. HAMIS ALLY MASAMBA11th RESPONDENT**
- 12. MOHAMED HASSAN UGANDO12th RESPONDENT**
- 13. ABDALLAH BUSHIRI SAID KALUPULA.....13th RESPONDENT**
- 14. MNEMO KASSIM MWATUMBO.....14th RESPONDENT**

EX-PARTE RULING.

S.M. MAGHIMBI, J:

This Ex-Parte Application was lodged under the provisions of Section 34(3) of the Prevention of Terrorism Act, No. 21 of 2002 read together with

Sections 188(1)(a)(b)(c)&(d) and (2) of the Criminal Procedure Act, Cap. 20 R.E 2022 ("the CPA"). The applicant, who is also the Director of Public Prosecutions, moved this court under certificate of urgency for the following orders:

1. The honorable Court order none disclosure of identity of the witnesses for security reasons during committal and trial proceedings related to preliminary inquiry No. 08/2016.
2. The honorable court be pleased to order none disclosure of the statements and documents likely to lead to the identification of witnesses for their security reasons during committal and trial proceedings related to PI No 08/2016
3. The trial proceedings in respect of PI No. 08/2016 to be held in camera.
4. The court be pleased to order that witness testimonies to be given through video conference in accordance with the provisions of Evidence Act, Cap. 6 R.E 2022 ("the Evidence Act").
5. Any other protective measure as the court may consider appropriate for the security of prosecution witnesses in respect of PI No. 08/2016, 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 any information that is likely to disclose location, residence and whereabouts of the prosecution witnesses or any of their close relatives.

The application was supported by an affidavit of Mr. Edgar Evarist Bantulaki, a State Attorney from the office of National prosecution Services, together with an affidavit of Assistant Commissioner of Police (ACP) Amini Mahamba who is the Deputy Zonal Crimes Officer (DZCO) of Dar-es-salaam. When the application came for ex-parte hearing, the respondent was represented by Mr. Faraji Nguka, learned State Attorney.

At the onset of his submissions, Mr Nguka prayed for the two affidavits in support of the application be adopted and form part of his submissions. He then gave a brief background of the application narrating that all the respondents stand charged with Terrorism Offences pending at Kisutu Resident Magistrates Court through PI No. 08/2016. The brief facts of the alleged offences were that that sometimes in the night of 11/07/2013, the respondents are alleged to have evaded Sitaki Shari Police Station while armed with several firearms. They managed to kill two police officers and three civilians, entered the police station armory where they stole twenty firearms and ninety rounds of ammunitions. After commission of this crime, the investigation was done by special task force which led to the arrest of the 3rd respondent in this matter who is Mr. Ramadhani Hamisi Ulature. Upon his arrest, the 3rd respondent was interrogated and revealed that he is among the big group of criminals who evaded different police stations for the aim of acquiring firearms which they will later use to establish Islamic states in Tanzania.

Further that through the same interrogations, the 3rd respondent helped the police to arrest second and fifth respondents in this application and they were arrested on Ulature Mosque in Mkuranga. It was further alleged that the investigation of this matter was supervised by ACP Amini

Mahamba who through different sources, managed to collect different evidences as well as interrogate different witnesses and the collected evidences was strong enough to enable the republic to charge all the respondents in this matter with the criminal case which is still pending at Kisumu RM's court. According to the submissions of Mr. Ngukah, the available evidence revealed that the respondents are part of the perpetrators of a big organised crimes group which commits different crimes in coastal region with the aim of establishing an Islamic state in the United Republic of Tanzania. He also revealed that the investigation conducted enabled the recovery of 20 firearms which was stolen at Sitaki Shari Police Station, 170,000,000/- Tshs which was stolen at NMB Mkuranga Branch.

The submissions of Mr. Ngukah were also that despite all the 14 perpetrators of this crime arrested, the evidence reveal that some members of this group managed to escape and through the affidavit of ACP Mahamba, it is clearly shown that some of the respective witnesses who we are expecting to use their evidence during trial have been or are scared because they are being threatened by some of the click of the respondents who are not yet arrested. He emphasized that for the stated reason, it is clear that prospective witnesses may not appear to give their testimony because of the threat that they are receiving from these colleagues of the respondents. He summed his submissions by pointing the reasons why the DPP is applying for the protection of our witnesses, which he submitted to so that they can be comfortable during trial of this matter because they cannot be identified during trial.

He supported his submissions and prayers by referring this court to several decisions of the court whereby under similar circumstances the court was moved and granted the orders for witness protection. The applications include **Misc. Criminal Application No. 25/2002 the DPP Vs. Mbwana Selemani Huga** whereby in this application, Hon. Masabo J, issued the order of witness protection as prayed by the DPP. He also cited another application, **Misc. Criminal Application No. 50/2022, DPP Vs. Saidi Bakari Mawazo & Others** whereby Hon. Kisanya J, also issued an order of witness protection as prayed by the DPP. In conclusion, he prayed for this Honorable Court to grant prayers as contained in their Chamber Summons.

Having heard the submissions of Mr. Ngukah including the reasons why the DPP is moving this court to grant such orders under Section 188(1) of the CPA, I must first reproduce the relevant Section of the law and then see whether the substance of the submissions have met the criteria set therein. Section 188(1) so provides:

"(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; or*
- (d) any other protection measure as the court may consider appropriate”*

The cited provision, having used the word “may grant” gives this court wide discretionary powers in assessing the conditions set in the provisions in relation to the facts of the application and see the most appropriate orders to be given in the wider context of protecting the witnesses pre, during and after the trial to ensure that they are not in any danger in all the period elaborated. The court orders shall ensure that the intended witnesses are safe from any threat, intimidation, potential retaliation or victimisation in due course of making the ends of justice meet. In the case **Director of Public Prosecutions vs Jafari Hassan @Mdoe @Abuu Kishiki (Misc. Criminal Application 114 of 2022) [2022] TZHC 12862 (06 September 2022)**; Honorable Kisanya, J while granting the application of the same nature, he cited with approval the decision of this same court in the case of **DPP Vs. Mohamed Hassan Ugando & Others, Misc. Criminal Application No. 27/2021** where he held:

*“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."

On the facts deposed in the affidavits and Mr. Nguka's submissions he has elaborated the kind of offence that the respondents stand charged with. The submissions also revealed that the respondents herein are alleged to be just a fraction of the big group of organised crimes some of which are still at large and that some of the respective witnesses who we are expecting to use their evidence during trial have been or are scared because they are being threatened by some of the click of the respondents who are not yet arrested. These are; in my strong view; sufficient reasons to move this court to grant the ex-orders sought by the applicant in her Chamber Summons. This application is hereby granted. Having granted the application, I proceed to make the following orders:

1. The identity of the witnesses including their particulars, whereabouts and places of abode shall be withheld from the date of this order, during committal proceedings related to preliminary inquiry No. 08/2016 and the conclusion of the subsequent trial and post-trial until it is ascertained that their security is no longer subjected to any form of threat or victimization.
2. For their security reasons, during committal and trial proceedings related to PI No 08/2016, the statements and documents likely to lead to the identification of witnesses shall not be disclosed.

3. The trial proceedings in respect of PI No. 08/2016 shall be held in camera.
4. The witness testimonies in trial proceedings in respect of PI No. 08/2016 shall be given through video conference in accordance with the provisions of Evidence Act, Cap. 6 R.E 2022.
5. Any dissemination and publication of documentary evidence and any other testimony bearing identity of prosecution witnesses in respect of PI No. 08/2016, without prior leave of the court is hereby prohibited.
6. Any dissemination and publication of any information that is likely to disclose location, residence and whereabouts of the prosecution witnesses or any of their close relatives is hereby prohibited.
7. The provisions of Sections 246 and 247 of the CPA should be fully conformed with in accordance with the orders herein in relation to the committal court's duty not to disclose the identity of witnesses.

It is so ordered.

Dated at Dar es Salaam this 20th day of March, 2023.



S.M. MAGHIMBI
JUDGE