

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY**

**MISCELLANEOUS CRIMINAL APPLICATION NO.46 OF 2023**

*(Originating from Criminal Sessions Case no. 23 of 2023 of the High Court of Tanzania Dar es Salaam District Registry and PI No. 1 of 20-23 in the Resident Magistrate's Court of Dar es Salaam at Kisutu)*

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

**Versus**

**ZAHAQ RASHID NGAI@ MTU MZIMA .....1<sup>ST</sup> RESPONDENT**

**CHANDE RASHID NJAWA .....2<sup>ND</sup> RESPONDENT**

**RASHID OMAR.....3<sup>RD</sup> RESPONDENT**

**JIHADI GAIBON @SWALEHE .....4<sup>TH</sup> RESPONDENT**

**RULING**

*9<sup>th</sup> & 12<sup>th</sup> May 2023*

**MKWIZU, J: -**

This is an *ex-parte* application for witness protection by the Director of Public Prosecutions brought under sections 34 (3) of the Prevention of Terrorism Act No. 21 of 2002 as amended by Act No. 2 of 2018 read together with sections 188 (1)(a), (b) (c) (d) and (2) and 392A of the Criminal Procedure Act (Cap 20 RE 2019) seeking for the following orders.

- 1. This Honorable Court be pleased to order non-disclosure of the identity and whereabouts of the witnesses in respect of preliminary Inquiry No. 1 of 2023.*

- 2. That, this Honorable Court be pleased to order non-disclosure of statements and documents likely to lead to the identification of witnesses in respect of preliminary Inquiry No. 1 of 2023.*
- 3. That, some witnesses connected to in respect of preliminary Inquiry No. 1 of 2023 to give their testimony through video conferencing during the trial of criminal Sessions No. 23 of 2023*
- 4. That, this Honorable Court be pleased to order trial proceedings in respect of criminal Sessions No. 23 of 2023 to be conducted in camera.*
- 5. This Honorable Court be pleased to order any order protection measure as the Court may consider appropriate for the security of the witnesses.*

It is supported by the affidavit of SP Georgy Malembu Simba and Tuly James Helela State attorney.

Ms Tuli Helela State Attorney was in an appearance on 9/5/2023 and argued the application on behalf of the Applicant, the DPP. She submitted that they have preferred this application for the protection of witnesses due to the seriousness of the accusations facing the respondents that involves criminal rackets in terrorism activities. That the nature of the offences and the entire setting of the case has been a threat to their intended witnesses dragging them into fear from the offenders, other terrorist groups, and suspects who are still at large calling for the protection of their identity and whereabouts so as to assist them to safely participate in the criminal proceedings against the offenders. She cited the case of **DPP vs Fundi Hamisi Kamaka @ Fundi Hamisi & 4 others**, Misc. Criminal Application No. 202 of 2021; **DPP**

**vs Haruna Musa Lugeye & Another**, Misc. Criminal Application No. 188/2021 and **DPP vs Abdi Sharif Hassan @ Msomali & Another**, Misc. Criminal Application No. 19/2020 ( All H/C Unreported). With a prayer that the application, be granted.

I have given the application thorough scrutiny. The only issue is whether the application is worth granting or not. This court has power under section 188 of the CPA, to grant the orders sought but only upon satisfaction that the disclosure of the prospective identity is likely to endanger their lives.

I have revised the affidavit in support of the application. Respondents are charged in the Resident Magistrate's Court of Dar es Salaam at Kisutu in P.I No. 1 of 2023 for offenses of Collection of Property for the commission of terrorist acts, Unlawful possession of armaments, and participation in terrorist acts. It is deposed that Reliable intelligence has revealed acts by the respondent's associates who are still at large obstructing justice and imparting fear to the prospective prosecution witnesses to discourage them from testifying against their associates demonstrated by several attempts by Respondent's associates to obtain names and identities of persons who are likely to be witnesses and threaten them not to cooperate with law enforcement officers and disappearance of some of the witnesses connected to the matter at hand.

All taken care of, it is the view of this court that there is exhibited in the affidavits a serious offence against the respondent with a stern danger against the prosecution's envisioned witness calling for their protection.

That said, the application is allowed, and order as follows:

1. The identity of the intended witnesses and their whereabouts in preliminary Inquiry No. 1 of 2023 be withheld from now on and throughout the trial proceedings.
2. All statements and documents likely to lead to the identification of witnesses in respect of preliminary Inquiry No. 1 of 2023 be withheld.
3. Some witnesses connected to preliminary Inquiry No. 1 of 2023 and criminal Sessions No. 23 of 2023 to give their testimony through video conferencing.
4. The trial proceedings in respect of criminal Sessions No. 23 of 2023 are to be conducted on camera.

It is so ordered.

**DATED at DAR ES SALAAM this 12<sup>th</sup> day of May 2023.**



**E. Y Mkwizu**  
**Judge**  
12/5/2023