

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)

THE HIGH COURT
(MUSOMA SUB REGISTRY)

AT MUSOMA

CRIMINAL APPLICATION No. 5 OF 2023

THE DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT

EX-PARTE FORFEITURE RULING

07.08.2023 & 07.08.2023

Mtulya, J.:

The **Director of Public Prosecution** (the applicant) filed the present application seeking for an *ex-parte forfeiture order* to confiscate a motor vehicle make **Toyota Passo** species with registration number **KCG 845G** (the vehicle) to the Government of the United Republic of Tanzania (the Government). Today afternoon, the application was scheduled for hearing, and **Mr. Juma Mahona**, learned State Attorney for the applicant appeared in this court and produced a reason in favor of the application.

According to Mr. Mahona, the vehicle was used in the trafficking of narcotic drugs of *cannabis sativa* species commonly known as *bhangi* of 20,950 grams (bhangi). In his opinion, the purpose of forfeiture is not to benefit the Government, but to discourage the convict from enjoying the fruits of proceeds of crime and to decline commission of further crimes.

Mr. Mahona submitted that any property which is linked with the commission or suspected commission of an offence is an instrumentality of the offence. In his opinion, the current trend is in favor of confiscation of any instrumentality of an offence. In order to persuade this court to resolve the application in favor of the applicant, Mr. Mahona had produced an **Ex-parte Forfeiture Ruling in the Director of Public Prosecution**, Criminal Application No. 8 of 2023.

In his opinion, Mr. Mahona, thinks that Tanzania as a State party to international treaties regulating drugs trafficking, it should take necessary measures to enable confiscation of proceeds of crimes derived from offences, properties, equipment or any other instrumentalities used in or destined for use in offences covered in the treaties. Mr. Mahona submitted further that that the Government has enacted **The Proceeds of Crimes Act [Cap. 256 R.E. 2022]** (the Act), which permits confiscation of tainted properties as per sections 2(a), 4(1)(c), 12(1)(a) of the Act, but before the confiscation order is pronounced, the applicant must register an application for forfeiture under section 30 (1) (a) & (6) of the Act.

Regarding the necessary materials registered in the present application, Mr. Mahona submitted that the vehicle was found with bhangi at Kitagasembe Village within Tarime District in Mara Region

on 28th April 2019. According to Mr. Mahona, the efforts to find and arrest culprit have proved futile as their whereabouts is unknown and no one who had showed interest in the vehicle.

In order to persuade this court to decide in favor of the applicant, Mr. Mahona had registered *Habari Leo Newspaper* of 5th July 2023 and Exhibit P.1 collectively, which contained: certificate of seizure of bhanghi, weight report of bhanghi, report of the sample of bhanghi, bhanghi analysis report and bhanghi inventory form.

Mr. Mahona has submitted further that the applicant has followed all necessary legal steps, including publication of the vehicle to invite interested parties through *Habari Leo Newspaper* of 5th July 2023 and filing the instant application for the prayer of forfeiture order to confiscate the vehicle to the Government.

I have scanned the record in the present application and the submission of Mr. Mahona. The record in *Habari Leo Newspaper* of 5th July 2023 which was admitted as attachment A in this application and exhibits P.1 collectively, show that the vehicle is linked with trafficking of narcotic drugs bhanghi hence it is an instrumentality of an offence hence liable for was confiscation as per **Ex-parte Forfeiture Ruling in the Director of Public Prosecution** (supra) pronounced today afternoon in this court.

The indicated precedent has visited a bundle of authorities in terms of United Nations treaties, national and international pieces

of legislation and precedents and finally concluded that there is a move supported by the United Nations instruments on the subject and the Government being party to the instruments, it must follow the course. The purpose of the instruments is to fight against transnational organized crimes, which pose threat to security, sovereignty, development and breach of human right, to which this State has interest.

Following the move, this State has enacted the Act for better dealing of the proceeds of crime. The Act was invited and tested by the Court of Appeal and this court in a bunch of decisions (see: **Director of Public Prosecutions v. Muharami Mohamed Abdallah @ Chonji & Another**, Criminal Appeal No 284 of 2017; **The Director of Public Prosecutions v. Francise Izayas Makaka**, Criminal Application No. 84 of 2020; and **Ex-parte Forfeiture Ruling in the Director of Public Prosecution** (supra).

In this jurisdiction, it is now certain and settled that when it is apparent that properties are tainted, the law permits confiscation of the properties to decline wrongdoers to benefit from their own wrongs. That is the intention of the enactment of the Act and currently cherished in our courts. It is the standard practice that may be promoted without any hesitation or reservations.

In the instant application, the question is: *whether the applicant has established, on balance of probabilities, that the*

vehicle was used as an instrumentality of an offence to be declared confiscated to the Government. The reply is obvious as indicated in the third page of this Ruling. The vehicle was used in as the instrumentality of the offence and *I hereby hold it liable for confiscation to the Government.* In the end, I make the following orders, under the provision of section 30 (1) (a), (6), (7), (8) & (9) of the Act:

1. The motor vehicle make **Toyota Passo** species with registration number **KCG 845G** is hereby forfeited to the Government of the United Republic of Tanzania;
2. When it happens, any person has an interest in the vehicle cited in order number 1 above and has exercised reasonable care to ensure that the vehicle was not tainted, the interest shall not be affected by the instant forfeiture order;
3. Where, any person claims an interest in vehicle cited in order number 1 above was not given notice, may file an application to this court praying for a set aside order of this court delivered today, 7th August 2013;
4. Any application which is filed to contest this order must be registered within sixty (60) days from today, 7th August 2023; and

5. The applicant in this application must comply with the provisions of the **Proceeds of Crime Act [Cap. 256 R.E. 2022]** in taking over the indicated vehicle in order 1 above.

Ordered accordingly.




F. H. Mtulya

Judge

07.08.2023

This Ruling was delivered in Chambers under the Seal of this court in the presence of **Mr. Juma Mahona**, learned State attorney for the applicant, the Director of Public Prosecutions.


F. H. Mtulya
Judge

07.08.2023