

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)

THE HIGH COURT

(MUSOMA SUB REGISTRY)

AT MUSOMA

CRIMINAL APPLICATION No. 8 OF 2023

THE DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT

EX-PARTE FORFEITURE RULING

07.08.2023 & 07.08.2023

Mtulya, J.:

Mr. Juma Mahona, learned State Attorney for the **Director of Public Prosecution** (the applicant) had appeared in this court today afternoon praying for *ex-parte* forfeiture order to confiscate a motor vehicle make **Toyota Land Cruiser Prado** species with registration number **KBW 222W** chassis number **TRJ1205041218** (the vehicle) to the **Government of the United Republic of Tanzania** (the Government).

Regarding the reason of forfeiture of the vehicle, Mr. Mahona submitted that that the vehicle was used in trafficking narcotic drugs of *cannabis sativa* species commonly known as *bhangi* sized 167.6 kilograms (bhangi). In his opinion, the purpose of forfeiture is not to benefit the Government, but to discourage culprits from

enjoying the fruits of the proceeds of the crime and also to decline commission of further crimes.

According to Mr. Mahona, any property which is connected in 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 a bunch of authorities in United Nations treaties, national and international pieces of legislation and courts' decisions in precedents (see: **United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances**, 1988; **United Nations Convention against Transnational Organized Crimes**, 2000; **Prevention of Organized Crimes Act No. 121 of 1998 (RSA)**; **The Proceeds of Crimes Act [Cap. 256 R.E. 2022]**; **The National Director of Public Prosecutions v. Egidius Hamutemya Hausiku**, Case No. 2330 of 2021 (HC-RSA); **National Director of Public Prosecutions v. Peter Graham Gardener & Another**, Case No. 582 of 2009 (HC-RSA); **National Director of Public Prosecutions v. R.O. Cook Properties (Pty) Ltd** 2004 (8) BCLR 844 (SC-RSA); and **The Director of Public Prosecutions v. Francise Izayas Makaka**, Criminal Application No. 84 of 2020(HC-TZA).

In the opinion of Mr. Mahona, the indicated United Nations treaties require states parties to the instruments to 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 conventions. Following the move of the United Nations, Mr. Mahona submitted that the Republic of South (RSA) has taken the course without any reservations and enacted the **Prevention of Organized Crimes Act No. 121 of 1998**, which has now produced a bundle of precedents on the subject in the RSA (see: **The National Director of Public Prosecutions v. Egidius Hamutemya Hausiku** (supra); **National Director of Public Prosecutions v. Peter Graham Gardener & Another** (supra); and **National Director of Public Prosecutions v, R.O. Cook Properties (Pty) Ltd** (supra).

During hearing of the application, Mr. Mahona submitted further that the Government had ratified the two indicated conventions of 1988 and 2000 on 17th April 1996 and 24th May 2006 respectively, and took legal measures by enacting **The Proceeds of Crimes Act [Cap. 256 R.E. 2022]** (the Act). According to Mr. Mahona, the Act permits the Government to confiscate tainted properties as per reading of sections 2(a), 4(1)(c), 12(1)(a)

of the Act and from an application for forfeiture order under section 30 (1) (a) & (6) of the Act.

Regarding the present application, Mr. Mahona submitted that the vehicle was found with *bhangi* of 167.6 kilograms at Kibeyo Village within Tarime District in Mara Region on 6th December 2019. According to Mr. Mahona, the efforts to search and arrest culprits have proved futile as their whereabouts is unknown and no one who had showed up for 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, which published the notice of the application of the forfeiture order and Exhibit P.1 collectively, which contained: certificate of seizure of bhangi; weight report of bhangi; report of the sample of bhangi; bhangi analysis report; and bhangi inventory form.

Mr. Mahona submitted further that the applicant has followed all necessary legal steps for forfeiture of the vehicle, including publication of the notice in the indicated *Habari Leo Newspaper* to invite interested parties and filing of the instant application praying for *ex-parte* forfeiture order to confiscate the vehicle to the Government.

I have scanned the present application, and grasped the submission of Mr. Mahona in materials and authorities. The move

initiated by the United Nations in 1988 via **United Nations Single Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances** was to provide additional legal mechanisms in enforcing the **1961 United Nations Convention on Narcotic Drugs** and **1971 United Nations Convention on Psychotropic Substances**.

The move was echoed in 2000 by enactment of the **United Nations Convention against Transnational Organized Crimes** via General Assembly Resolution No. 55/25 of 15th November 2000, to battle against transnational organized crimes, which pose threat to security, sovereignty, development and enjoyment of human right.

It is fortunate that the Government had noted the threat hence ratified the dual indicated conventions of 1988 and 2000 and has put in the **Constitution of the United Republic of Tanzania [Cap. 2 R.E. 2002]**, the contents of the indicated subjects. In order to appreciate the Constitution and United Nations enactments on the indicated subjects, the Government in Tanzania had moved a step further by enacting the Act and **Drugs and Prevention of Illicit Trafficking of Drugs Act [Cap. 95 R.E. 2019]** (the Drugs Act). The preamble to the Drugs Act had recognized the move initiated at the United Nations in the following words:

*An Act to consolidate the law relating to narcotic drugs; to make provision for the control and regulation of operations relating to narcotic drugs and psychotropic substances; to provide for the forfeiture of property derived from or used in illicit traffic in narcotic drugs and psychotropic substances; to provide for the prevention of illicit traffic in narcotic drugs and psychotropic substances and **to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances.***

(Emphasis supplied).

The Drugs Act was repealed by the **Drugs Control and Enforcement Act [Cap. 95 R.E. 2022]** (the Drugs Act), without any much substantive changes save for establishment of authorities for controlling and combating drugs. The Act on the other hand was enacted for better dealing of the proceeds of crime.

The Act and Drugs Act were invited and tested by the Court of Appeal in the precedent of **Director of Public Prosecutions v. Muharami Mohamed Abdallah @ Chonji & Another**, Criminal Appeal No 284 of 2017 and this court in **The Director of Public**

Prosecutions v. Francise Izayas Makaka (supra). This court in the indicated precedent thought that when it is apparent that properties are tainted, the law in our jurisdiction prohibits the wrongdoer to benefit from his own wrongs, whereas the Court of Appeal had moved a further step in searching for tainted properties and stated, at page 28 of the judgment, that:

It is a notorious fact that professional and habitual criminals frequently take steps to conceal their profits from crime. Effective but fair powers of confiscating the proceeds of crime are therefore essential...Our reading between the lines of the POCA [The Proceeds of Crimes Act] and a thorough research on the point, has made us certain that property capable of being restrained need not necessarily belong to an accused person. It could be property owned by a third party but one in which the accused person has an interest or derives benefit.

The above cited paragraph literally shows the intention of the United Nations, the Government and Parliament of Tanzania in enacting the two pieces of legislation, the Act and Drugs Act. The thinking of our superior court is currently cherished in other

jurisdictions (see: **The National Director of Public Prosecutions v. Egidius Hamutemya Hausiku** (supra); **National Director of Public Prosecutions v. Peter Graham Gardener & Another** (supra); and **National Director of Public Prosecutions v, R.O. Cook Properties (Pty) Ltd** (supra). In the decision of **The National Director of Public Prosecutions v. Egidius Hamutemya Hausiku** (supra), for instance, the High Court in the Republic of South Africa, located at Northern Cape, Kimberley, had recorded that:

...where there is sufficient close link between the property and its criminal use, the property becomes an instrumentality of the offence liable for confiscation.

This passage shows the standard practice of the international community on the indicated subjects, to which state parties to the two cited conventions may abide. This court shall cherish the move of the Court of Appeal and international community in interpreting statutes regulating drugs, illicit trafficking of drugs, restraint and confiscations orders on the subjects.

In the present application, therefore, the question before this court 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.*

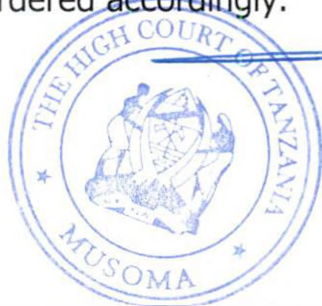
Reading the materials on record, especially the applicant's affidavit, attachment A and exhibit P.1 collectively, the applicant has managed to persuade this court to grant the application. In my considered view, I hold that, *the vehicle was used as the instrumentality of the offence and I hereby hold 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 Land Cruiser Prado** species with registration number **KBW 222W** chassis number **TRJ1205041218** 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;

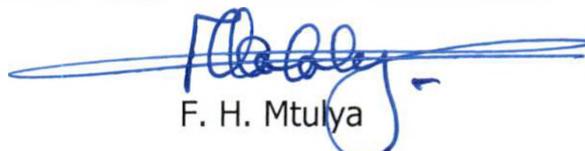
4. Any application, which is filed to contest this order,
must be registered within sixty (60) days from today,
7th August 2023; and
5. The applicant in this application must comply with the
provisions of the **Proceeds of Crime Act [Cap. 256 R.E.
2022]** in taking over the indicated vehicle in order 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