

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM SUB- REGISTRY)

AT DAR ES SALAAM

CRIMINAL SESSION CASE NO. 212 OF 2022

(ORIGINAL P.I NO. 18 OF 2013)

REPUBLIC

VERSUS

1. ALLY OTHUMANI RASHID

2. FARAJI ALI RAMADHANI

3. SHABAN BAKARI WAZIRI

4. MUSSA DAUDI MTWEVE

RULING

30th April & 2nd May 2024

I.C MUGETA, J

When PW8 gave evidence, he said that he arrested the first accused at his residence on 31/10/2013. That upon arrest he conducted emergency search in the house and seized a DVD entitled "nasaha za ummah Ibrahim R". Then he sought to tender the seizure certificate in court. The defence objects because the certificate is a normal not an emergency seizure certificate and the property seized is identified as "DVD inayohusu mambo ya Al-Shabab" which makes it a different thing.

I overrule the objection because the difference between the title on the DVD and how PW8 named it in the seizure certificate neither invalidate the certificate nor stripes it off its admissibility as long as its contents are in issue and relevant in terms of section 7 of the Evidence Act [Cap. 6 R.E 2022]. No law gives direction on how the seizing officer should identify the object in the seizure certificate so there is no point in faulting PW8 for naming the DVD as he wished. On the seizure certificate not indicating it was emergency seizure, I agree with the prosecution that a seizure certificate is a standard form and for the seizure to be termed as emergency or ordinary is a matter of evidence not title on the form. PW8 said the need to search arose upon arresting the first accused person. Definitely, this falls in the category of emergency search.

The defence side also attacked the admissibility of the seizure certificate on ground that PW8 did the arrest, search and seized property without a search warrant while those processes were pre-arranged as he got the information about the first accused involvement in the commission of the crime on 29/10/2013 and the arrest was on 31/10/2013. Therefore, it was argued, the search and seizure were illegal in terms of section 38 (1) (a) (b) and (c) of the CPA and the

Prevention of Terrorism Act. The relevant section of the late Act was not cited.

I find the objection misconceived. While it is true that the arresting of the first accused was pre-arranged, it is not true that the search and seizure were pre-arranged. There is no evidence on record that PW8 knew that there is a DVD in the house of the first accused person before the search and its discovery. Section 38(1) of the CPA applies where before the search, the police officer has reasonable ground to believe there is, in a dwelling house, a thing in respect of which an offence has been committed. As argued by the prosecution side and established by the evidence of PW8, the mission was to arrest the first accused. Having arrested him at his residence, the decision to search his house was made and finally property was seized. PW8 testified that by then his rank was Assistant Superintendent of Police, therefore, in terms of section 28(1) and 29(1) of the Prevention of Terrorism Act, 2002 he could arrest, search and seize properties. What PW8 did, therefore, was lawful. On that account, I decline the invitation of the prosecution to invoke the provisions of section 169 of the CPA by which illegally obtained evidence can be admitted for several factors including seriousness of the offence.

On the objection to reject the certificate in terms of section 33 of the Prevention of Terrorism Act, 2002 on ground that PW8 seized and detained properties while he is neither IGP nor a Commissioner of police, I also see no merits in it because the seizure certificate is not a property. At this stage, the fact in issue is the seizure certificate not the DVD seized. Secondly, section 33 does not apply in all situations. It applies in a situation where the seized property was the absolute seizure mission target following intelligence surveillances. In this case the initial target was arresting the first accused person. Searching his residence and seizing properties were consequences of the process. Such action neither need to be performed by the IGP or a Commission of Police nor needs their authorisation.

The argument that an application ought to have been made to the court for a detention order of the seizure certificate is also misconceived. I have made a similar decision on the same issue in this court: that custody of the seizure certificate by the police under section 33 of the Prevention of Terrorism Act does not need a court detention order. I so reiterate because a seizure certificate is not a property in the meaning of that section.

Finally, the defence side has urged me to follow my former decision in this case on a similar objection. I have reflected on this plea and I see nothing relevant to the defence arguments in that ruling.

In the fine, all objections are overruled.



I.C. Mugeta
I.C. Mugeta
Judge
02/05/2024

Court: Ruling delivered in open court in the presence of all accused persons, their advocates and the learned State Attorneys whose identity I have deliberately withheld for security reasons.

Sgd: I.C. Mugeta
Judge
02/05/2024