

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE CORRUPTION AND ECONOMIC CRIMES DIVISION
AT DAR ES SALAAM REGISTRY**

MISC. ECONOMIC CAUSE NO. 01 OF 2016

(Originating from the Resident Magistrates' Court of Dar es Salaam at
Kisutu in Economic Criminal Case No. 45 of 2016)

1. JEREMIAH MADAR KERENGE 1ST APPLICANT
2. ALLY DAMJI RAZA 2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

Date of Last Order: - 14/11/2016

Date of Ruling: - 16/11/2016

RULING

R.K. MKUYE, J.

This ruling emanates from a bail application through services of CRAX Law Partners and M.R.M Lamwai & Co. Advocates for the 1st and 2nd applicants respectively filed on 27/10/2016. The applicants herein seek indulgence of this Court to be released on bail regarding Economic Criminal Case No. 45/2016 currently pending for inquiry before Dar es Salaam Resident Magistrates' Court at Kisutu involving the 1st applicant (2nd accused), 2nd applicant (3rd accused) and one Fu Chang Feng (1st accused).

In the said Economic Criminal Case No. 45/2016, the 1st and 2nd accused persons, that is, one Fu Chang Feng and 1st applicant respectively, are charged with importation of prohibited goods contrary to sections 146(a)(i) of the Customs (Management and Tariff) Act, [CAP. 403 R.E,

2002] read together with paragraph 10(a) (sic) I think paragraph 11(a) of the First Schedule and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, [CAP. 200 R.E, 2002] as amended by Act No. 3 of 2016 being 1st count involving 499 bags of monofilament net valued at Tshs. 7,485,000,000/=.

Additionally, all the accused persons are charged with possession and storage of prohibited fishing gears contrary to regulation 66(1)(a) and (4) of the Fisheries Regulations, G.N. No. 308 of 2009 relating to storage of 325 bags containing 187 pieces of monofilament net valued at Tshs: 15,193,750,000/= for 2nd count; and possession and storage of prohibited fishing gears contrary to regulation 66(1)(f) and (4) of the Fisheries Regulations G.N. No. 308 of 2009 involving storage of 50 bags containing 200 pieces of fishing gillnet valued at Tshs. 300,000,000/= for the 3rd count.

The said application is made by chamber summons pursuant to section 29(4)(d) of the Economic and Organized Crime Control Act, [CAP. 200 R.E, 2002] referred to as the EOCCA as amended by Act No. 3 of 2016 and sections 148(1) and (4) of the Criminal Procedure Act, [CAP. 20 R.E, 2002] referred to as the CPA. The chamber summons is supported by affidavits sworn and affirmed in person by the applicants respectively.

Hearing of the bail application was conducted orally whereas Mr. Timothy Vitalis, learned Principal State Attorney, appeared for the Respondent/Republic and Roman Selasini Lamwai, learned advocate, appeared for both applicants. Notably, Mr. Majura Magafu, advocate who initially appeared for and represented the 1st applicant, did not enter

appearance in Court for undisclosed reasons. That notwithstanding, the 1st applicant having consulted Mr. Roman Selasini Lamwai who represented the 2nd applicant, it was agreed between the 1st applicant and Mr. Roman Selasini Lamwai for him also to represent the 1st applicant.

Addressing the bail application, Mr. Roman Lamwai urged for the applicants' affidavits to form integral part of his submission. Mr. Lamwai added that, the 1st applicant's affidavit is to the effect that, his wife is pregnant, that is, an expectant and therefore the 1st applicant's presence is of important to take care of her. He added, the 1st applicant has a place of abode in Dar es Salaam and he is ready to comply with the bail conditions.

On the part of the 2nd applicant, Mr. Lamwai submitted that, the applicant hails from Dar es Salaam and he is the only son to his parents who are totally dependent on him. Being a businessman with a permanent place of abode in Mnazi Mmoja, Dar es Salaam, his incarceration will cause untold hardship to his parents and certainly, wreck of his business.

Moreover, the learned counsel submitted that the 2nd applicant is married and blessed with a son who is suffering from Tuberculosis (TB), hence he (the applicant) is the only person who has been looking after his treatment. He added that, the charged offences against the 2nd applicant do not fall under economic offences. Mr. Lamwai thus urged for the applicants to be released on bail considering that the Republic/Respondent is not objecting the grant of bail.

On his part, Mr. Vitalis submitted that, **one**, basically, the Republic did not file a Counter Affidavit as they did not dispute the asserted facts.

Two; the Republic is not objecting grant of bail because the charged offences are bailable. **Three,** the applicants have stated in the affidavits, that they will comply with bail conditions to be imposed by this Court.

However, Mr. Vitalis learned Principal State Attorney stressed compliance to section 36(5) of the EOCCA as amended by Act No. 3 of 2016 where the applicants are required to deposit half cash of the amount involved or property valuing at half of the subject matter. Mr. Vitalis thus argued that, since the total value is Tshs. 22,978,750,000/= and considering that the accused persons are three in number, applying the principal of sharing; each has to deposit cash sum or property valuing at Tshs. 3,829,791,666/= with addition of the conditions set under section 36(6) of the EOCCA.

Regarding the 2nd applicant, Mr. Vitalis submitted that, the amount to be apportioned to the 2nd applicant will truly differ but arguing that, the 2nd and 3rd counts, being not economic offences, will make no difference especially when read together with section 148(5) of the CPA. In rejoinder, Mr. Lamwai conceded that, the 1st count should not cover the 2nd applicant.

Having considered the application at hand on one hand and the respective submissions by the applicants' counsel and the learned Principal State Attorney for the Respondent/Republic on the other hand, in unison, the following are the deliberations of this Court in disposal.

Out rightly, since the Republic/Respondent is not objecting to the grant of bail and considering that the charged offences are bailable, there is no remaining point to delve in as to grant of bail. Despite that, two minor

issues call determination, **one**, as to whether the charged offences fall, under mandate of this Court for bail application **two**, to what proportions, the applicants share the amount to be imposed in the bail conditions.

Starting with the 1st minor issue, Mr. Lamwai learned counsel has argued that, the 2nd and 3rd counts in the charged offences currently pending in the subordinate court for inquiry do not fall under economic offences, the imputation which was not rather objected by Mr. Vitalis learned Principal State Attorney. Understandably, in terms of the Schedule to the EOCCA under section 57(1) of the EOCCA and the amendments to the Schedule per section 57(2) of the EOCCA, the two charged offences, that is, 2nd and 3rd counts do not fall under the category of Scheduled offences.

They do not fall under that category because offences under the Fisheries Regulations G.N. No. 308 of 2009 are not among the scheduled offences. It is in that lineage that the fact that the charged amount exceeds Tshs. 1,000,000,000/= cannot automatically confer jurisdiction to this Court. Jurisdiction of this Court is conditional in terms of section 3(3) of EOCCA as amended by the Written Laws (Miscellaneous Amendments) Act, 2016, (Act No.3 of 2016) that is, **one**, they should be corruption and economic offences specified in paragraphs 3 to 21 and 27, 29 and 38 of the 1st Schedule where the involved amount is not less than one billion pursuant to section 3(3)(a) as amended by Act No.3 of 2016 and **two**, economic offences specified under paragraphs 22 to 28, 30 to 37 & 39 of the 1st Schedule regardless of the value pursuant to section 3(3)(b) of EOCCA as amended by Act No.3 of 2016. Summarily, a pre-condition is set

that the same should be corruption and economic **and** economic offences, respectively.

The **only exception** to conferring jurisdiction to this Court involving non scheduled offences is when such other offences are referred to or instituted in the Court in terms of the provisions of the EOCCA. This is provided for under section 3(3)(c) of the the EOCCA as amended by Act, No.3 of 2016. The immediate question is, how can such other institutions or, references be made or met? Hurriedly, though not the only avenue, that caters to cover situations when the Director of Public Prosecutions exercises his powers in terms of section 12(4) of the EOCCA:-

"The Director of Public Prosecutions or any State Attorney duly authorised by him, may, in each case in which he deems it necessary or appropriate in the public interest, by certificate under his hand order that any case instituted or to be instituted before a court subordinate to the High Court and which involves a non-economic offence or both an economic offence and a non-economic offence, be instituted in the Court".

Thus, though currently the accused persons have not been committed to this Court for trial and considering that, from the involved amount, essentially, that the 2nd and 3rd counts gives, are not economic offences, yet, this Court is aware of applicability of other avenues in arraigning the accused persons before this Court despite being non scheduled offences as detailed above under section 3(3)(c) of the EOCCA as amended by Act No.3 of 2016.

Such position of the law thus finds the argument by Mr. Lamwai that the 2nd and 3rd counts are not economic offences not meritorious in law thus un-maintainable. It thus follows that, the involved amount, being above ten million, bail application is vested to this Court for determination.

Regarding the 2nd minor issue as to the proportions the applicants should share in the imposed bail conditions by this Court, as correctly submitted by Mr. Vitalis learned Principal State Attorney, in terms of section 36(5)(a) of the EOCCA, clearly, the law requires in mandatory terms for an applicant to deposit cash or other property, equivalent to half the amount or value of actual money or property involved.

As also correctly submitted by Mr. Vitalis, in the circumstances where the charged accused persons are more than one, definitely the applicable principle is that of sharing as was clearly demonstrated by the Court of Appeal in **Silvester Hillu Dawi & Stephen Leons Mwambene vs. the Director of Public Prosecutions**, Criminal Appeal No. 250 of 2006, (Unreported), (Dare es Salaam Registry) where the Court underscored that applicants have to share the burden as security, which I fully subscribe.

Therefore, applying the principle of sharing, the amount due to the 1st applicant in the involved counts, that is; 1st, 2nd and 3rd counts:

1st count:- 1,871,250,000/=;

2nd count:- 2,532,991,666.66/=; and

3rd count:- 50,000,000/=) is Tshs. 4,454,241,666.66/=. Thus, the 1st applicant should either deposit cash **or** properties worth Tshs. 4,454,241,666.66/=.

Regarding the 2nd applicant, the involved counts are the 2nd and 3rd counts:

2nd count:- 2,532,991,666.66/=; and

3rd count:-50,000,000/=) making a total of Tshs. 2,582,991,666.66/=.

Thus, the 2nd applicant should either deposit cash **or** properties worth Tshs. 2,582,991,666.66/=.

Also in addition to the above, it is directed that:

1. Each applicant must produce two (2) reliable surities who should each execute a bond of the half the amount established above.
2. Each applicant should not leave Dar es Salaam City without a prior permission of the Resident Magistrate in charge of Dar es Salaam Resident Magistrates' Court at Kisutu.
3. Each applicant must surrender to the Bandari Police Station his passport and any other travelling document(s) he may be possessing.
4. Each applicant must report to the Bandari Police Station every Monday before 12:00 hrs (noon).
5. Each applicant to appear before the Court on a specified time and place as scheduled by the Court.

It is further ordered that:-

1. The applicants are to remain in custody until the terms concerning cash deposit or deposit of the Title Deeds of immovable properties are satisfied. Ownership of any property should be approved by the Commissioner for Lands and or the Registrar of Titles (as the case may be) as well as their legal status regarding any encumbrances

whatsoever including but not limited to caveats, mortgages and any ownership disputes in respect of any pending suit whatsoever.

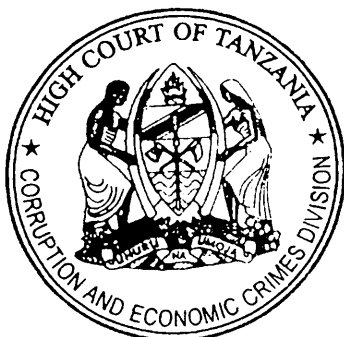
2. The surities produced by each applicant must be approved by the Resident Magistrate in charge of Dar es Salaam Resident Magistrates' Court at Kisutu. By reliable sureties, it means a person who is in active public service.
3. The Resident Magistrate in charge of Dar es Salaam Resident Magistrates' Court at Kisutu must ensure that all bail conditions are accordingly implemented and met before releasing the applicants.

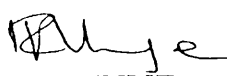


Order accordingly.


R.K. MKUYE
JUDGE
16/11/2016

Ruling delivered in chambers this 16th day of November, 2016 in presence of Mr. Roman Lamwai for the applicants and in presence of Mr. Timothy Vitalis for the respondent Republic.




R.K. MKUYE
JUDGE
16/11/2016

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE CORRUPTION AND ECONOMIC CRIMES DIVISION
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MISC. ECONOMIC CAUSE NO. 01 OF 2016

(Originating from the Resident Magistrates' Court of Dar es Salaam at
Kisutu in Economic Criminal Case No. 45 of 2016)

1. JEREMIAH MADAR KERENGE 1ST APPLICANT
2. ALLY DAMJI RAZA 2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

Date of Last Order: - 03/11/2016

Date of Ruling: - 14/11/2016

RULING

R.K. MKUYE, J.

On 27th day of October, 2016, the applicants through services of CRAX Law Partners and M.R.M Lamwai & Co. Advocates respectively applied for the applicants to be released on bail pending trial in Economic Criminal Case No. 45/2016. The application is made by chamber summons pursuant to section 29(4)(d) of the Economic and Organized Crime Control Act, [CAP. 200 R.E, 2002] referred to as the EOCCA as amended by Act No. 3 of 2016 and section 148(1) and (4) of the Criminal Procedure Act, [CAP. 20 R.E, 2002] referred to as the CPA. The chamber summons is supported by affidavits sworn and affirmed in person by the applicants respectively.

On 03/11/2016 when the matter was called for mention, Mr. T. Vitalis learned Principal State Attorney for the Respondent/Republic raised a Preliminary Point of law to wit that:-

(a) This Court has no jurisdiction to determine the application.

Hearing of the Preliminary Point of Objection was heard orally whereas Mr. T. Vitalis learned Principal State Attorney appeared for the Respondent/Republic while Mr. Majura Magafu learned advocate appeared for the 1st respondent. Dr. M.R.M. Lamwai assisted by Mr. Roman Lamwai both learned advocates appeared for the 2nd applicant.

Backing his objection, Mr. Vitalis submitted that, this Court derives its powers under section 3 of the EOCCA as amended by Act No. 3 of 2016. Mr. Vitalis added that, powers of this Court to grant bail in economic offences is provided for under section 29(4)(c) of the EOCCA after an information is filed in this Court and not before, as it stands. He argued that, since the application has been brought under section 29(4)(d) of the EOCCA, therefore, the jurisdiction is vested in the "High Court" and not the Corruption and Economic Crimes Division of the High Court.

Mr. Vitalis stressed that the term "High Court" was never amended by the legislature arguing that that was not an oversight because in the very section 29, subsections (3), (7) and (8) were amended by deleting the word "High Court" and substituting for it the word "Court" meaning the Corruption and Economic Crimes Division of the High Court. He contended that, that was so done purposely that this Court may not be overcrowded.

Mr. Vitalis further argued that, this Court has only one registry thus the threshold for bail being ten million, the Court will be overcrowded thus unnecessarily increasing the number of inmates. Additionally, section 148(1) and (4) of the CPA cannot be invoked as an enabling provision because the law is settled that where there is a specific section under the EOCCA then, the CPA cannot apply. He cited a Court of Appeal decision in **Edward D. Kambuga and Another vs. Republic**, [1990] T.L.R 84.

Likewise, Mr. Vitalis argued, the proviso under section 28 of the EOCCA is clear that the CPA cannot apply in situations which the EOCCA caters for. Moreover, section 4(2) of the CPA excludes application of the CPA where there are specific provisions governing a specific matter. It is from the above Mr. Vitalis Principal State Attorney took on board inapplicability of section 148 of the CPA. He also cited a High Court decision in **George Ciucanu & 2 Others vs. Republic**, Miscellaneous Criminal Application No. 155 of 2016, (Dar es Salaam Registry), (Unreported) specifically at page 16.

In response, Dr. Lamwai submitted that, in terms of section 3(1) of the EOCCA as amended through the Written Laws (Miscellaneous Amendments) Act, 2016, the law established the Corruption and Economic Crimes Division of the High Court but it did not establish a separate Court from the High Court meaning that, the division is not outside the High Court as established under Article 108(1) of the Constitution of the United Republic of Tanzania, [CAP. 2 R.E, 2002]. Besides, civil and criminal jurisdictions of the High Court are derived under section 2(1) of the

Judicature and Application of Laws Act, [CAP. 358 R.E, 2002]. In other words, section 3 of the EOCCA as amended by Act No.3 of 2016 did not confer exclusive jurisdiction whatsoever. He cited the case of **Mtenga vs. University of Dar es Salaam**, [1971] HCD 247 specifically at page 173 where the Court held:-

" It is trite to observe that a Court is, and has to be for the protection of the public, jealous of its jurisdiction, and will not lightly find its jurisdiction ousted. ... but for the Court to find that the legislature has ousted its jurisdiction, the legislature must so state in no uncertain and in the most unequivocal terms ...".

Moreover, this Court has inherent powers to make orders on matters before it as per the case of **Deemay vs. Republic**, [1980] T.L.R 1. Rule 3 of the Economic and Organized Crimes Control (The Corruption and Economic Crimes Division) (Procedure) Rules (GN No.267 of 2016) defines the Court to mean the Corruption and Economic Crimes Division of the High Court in clarification of section 3(3) of the EOCCA. Additionally, the same Rules under rule 6 brings into play powers of this Court to adjudicate corruption, economic, miscellaneous causes and bail applications inclusive.

Dr. Lamwai further submitted that, there is one main Registry in the Corruption and Economic Crimes Division of the High Court with fourteen sub registries in the High Court sub registries per the Schedule to the Economic and Organized Crimes Control (The Corruption and Economic Crimes Division) (Procedure) Rules thus discontenting untrue the supposition by Mr. Vitalis that this Court will be overcrowded if it is left to

hear bail applications. Moreover, Dr. Lamwai stressed that, sections 2(1) and 3 of the EOCCA as amended by Act No.3 of 2016 define the term "Court" to mean the Corruption and Economic Crimes Division of the High Court.

As to the argument by Mr. Vitalis that section 29(4)(d) was deliberately not amended, Dr. Lamwai hurriedly referred this Court to **Joseph Warioba vs. Stephen Wassira and Another** [1997] T.L.R 272 where the Court of Appeal invoked a purposive legislative approach meaning in reintroduction of "corruptive practices" arguing that that was inadvertently. He added, under the Interpretation of Laws Act, [CAP. 1 R.E, 2002], the term "High Court" meant without exclusion of the High Court Divisions.

As to section 148(1) of the CPA, Dr. Lamwai submitted that, bail applications under the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 are ambiguous. In circumstances where section 29(4)(d) of the EOCCA leaves a lacunae, the same can be taken care of by section 148 of the CPA. Moreover, section 4(2) of the CPA deals with inquiry which is not the case in the matter under scrutiny for bail is not an inquiry or trial.

He added that, section 28 of the EOCCA deals with procedures of arraignment, hearing and determination thus inapplicable as the matter has not reached that stage. He thus urged this Court to overrule the Preliminary Point of Objection and grant the applicants' bail as prayed.

On his part, additionally Mr. Majura Magafu submitted that, under section 36(1) of the EOCCA, the Court is vested with jurisdiction to deal with bail where information is already filed in Court. Section 29(4)(d) of the EOCCA empowers the Court to deal with bail applications before finalization of committal proceedings, that is, before filing of Information.

Section 2 of the EOCCA is amended by sections 5 and 6 of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 whereas the terms "Court" is amended by vesting powers to this Court meaning that that gist tend to change and overhaul the whole Act to capture even the contested section 29(4)(d) of the EOCCA in this application.

Mr. Magafu thus argued that had the legislature intended to subdue powers of this Court as to bail, the legislature ought to have clearly and categorically so stated. He added that, that is the essence of applicability of the Economic and Organized Crimes Control (The Corruption and Economic Crimes Division) (Procedure) Rules vide G.N. No. 267 of 2016, the same piece of law which is unavailable in the normal High Court Criminal registries. Mr. Magafu added that, citation of section 148 of the CPA was to cater for the offences not falling under the EOCCA such as count number 3 of the Charge Sheet filed in the subordinate Court.

In rejoinder, Mr. Vitalis put it in summary that, under section 29(4) of the EOCCA, Courts with jurisdiction to determine bail are, **one**, this Court that is, the Corruption and Economic Crimes Division of the High Court **two**, the High Court, **three**, Resident Magistrates' Court and **four**, District Courts. He added, in determining applicability of sections 36(1) and

29(4) of the EOCCA, consideration should be paid to **first**, the stage reached in the proceedings and **second**, the involved amount. He maintained that, since the accused persons have not been committed to this Court for trial, the powers are vested to the ordinary High Court unlike in this Court.

Mr. Vitalis stressed this Court not to exercise its inherent powers as the present matter has specific provisions for the sought prayers. Besides, sections 4 and 148 of the CPA are general provisions on bail whereas section 148(4) of the CPA is applicable in a situation where bail is objected by the DPP which is not the case. He maintained his earlier prayer for the application to be struck out. In the alternative, if the Court finds the objection non meritorious, Mr. Vitalis argued for the application to be argued on merit for parties were only invited to address the Preliminary Point of Objection meaning that, the same is yet to be heard on merits.

Having considered the contents of the application at hand in entirety and the respective submissions by the learned counsel, the following are the deliberations of this Court in disposal. At the outset, I wish to express my gratitude to both counsel for their submissions they endeavoured to avail to this Court. They have been helpful in finally determining the Preliminary Objection regarding jurisdiction of this Court in respect of bail applications.

As earlier noted, it is undisputed that the applicants have been charged with several counts currently pending in the Resident Magistrates' Court of Dar es Salaam at Kisutu for inquiry before they are committed

before this Court to encounter their trial. For the sake of easy reference, the contentious section in the bail application is sections 29(4)(d) of the EOCCA for as correctly submitted by Mr. Vitalis, section 148(4) of the CPA is not at issue as no point of Certificate of the DPP arise.

Section 29(4) (a) - (d) of the EOCCA reads:

- "(4) After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purposes of this section the power to hear bail applications and grant bail–**
- (a) between the arrest and the committal of the accused for trial by the Court, is hereby vested in the district court and the court of a resident magistrate if the value of any property involved in the offence charged is less than ten million shillings;**
 - (b) after committal of the accused for trial but before commencement of the trial before the court, is hereby vested in the High Court;**
 - (c) after the trial has commenced before the Court, is hereby vested in the Court;**
 - (d) In all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court".**

Likewise, the term "Court" as provided for under the referred section 2 of the EOCCA before the amendment vide the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 reads:

""Court" means the High Court sitting as an Economic Crimes Court pursuant to section 3".

Besides, section 3 of the same EOCCA reads:-

“(1) The jurisdiction to hear and determine cases involving economic offences under this Act is hereby vested in the High Court.

(2) The High Court when hearing charges against any person for the purposes of this Act shall be an Economic Crimes Court”.

Thereafter, the said section 2 through vide the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 read:-

“The principal Act is amended in section 2 by-

(a) deleting the definition of the term “Court” and substituting for it the following-

""Court" means the Corruption and Economic Crimes Division of the High Court established under section 3;”.

In the first place, primarily, before the amendments vide the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016, determination of Economic cases on merits were solely vested to the High Court sitting as Economic Crimes Court in terms of sections 2 and 3 of the EOCCA or by a court subordinate to the Economic Court as specified and to the extent of powers in the Certificate by the DPP in terms of section 12 of the EOCCA.

Reverting to section 29(4) of the EOCCA generally before the fateful amendments vide Act No. 3 of 2016, under normal circumstances, bail

jurisdiction is vested to the Resident Magistrates' Courts and District Courts **before trial** in matters of less than ten million shillings in terms of section 29(4)(a) of the EOCCA.

For matters which have been committed to the Court for trial but **before** commencement of trial, bail jurisdiction is vested to the High Court, meaning the normal High Court registry in terms of section 29(4)(b) of the EOCCA no matter the value that is, be it less or above ten million provided that the matter has been committed to the Economic Crimes Court for trial but trial is yet to commence. After commencement of trial, jurisdiction is exclusively vested to the Economic Crimes Court in terms of section 29(4)(c) of the EOCCA regardless of the involved value of money.

Now, since all situations have been taken care as illustrated hereinabove, what stands the essence of section 29(4)(d) of the EOCCA in respect of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016? Objectively, section 29(4)(d) of the EOCCA addresses all cases meaning that, at any stage the matter has reached **but before trial**, in that exclusive bail jurisdiction is vested to the High Court provided that the charged offences involve the value of ten million or more.

Within that spirit, as correctly submitted by Mr. Vitalis, section 29(4)(d) of the EOCCA was not amended vide the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 despite some other subsections being amended in the very same section 29 of the EOCCA.

Noticeably, section 29(3), (7) and (8) of EOCCA as amended by Act No. 3 of 2016 touched situations before commencement of trial before the High Court Economic Crimes Court, currently, the Corruption and Economic Crimes Division of the High Court.

From the above, this Court is in agreement with the submission by both Dr. Lamwai and Mr. Magafu learned advocates that the said section 29(4)(d) of the EOCCA was not amended inadvertently because the current position should stand; in purview of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016, whatever was formerly done by the High Court ordinary registry [as per section 29(4)(d) of the EOCCA] should be exercised by the "Court" and what was done in the "High Court" sitting as "Economic Crimes Court" should also be exercised by the "Court" as per sections 2 and 3 of EOCCA as amended by Act No. 3 of 2016 as the terms "Court" and "High Court" have been replaced by "the Corruption and Economic Crimes Division of the High Court".

Even considering that the amendment to section 29(4)(d) of the EOCCA was so left deliberately as Mr. Vitalis strenuously submitted that the same was not an oversight, yet, that should not be interpreted to mean that the amendments in Act No. 3 of 2016 were intended to restrain powers of this Court from determining bail applications.

This Court is aware that, there are matters exceeding ten million shillings which bail has to be applied to the High Court (not the subordinate court) despite jurisdiction in terms of value falling in the same subordinate Court. This is because matters triable by this Court are to the threshold of

one billion shillings and above as correctly argued by learned brother in the cited case of **George Ciucanu & 2 Others vs. Republic** (supra), meaning, in such matters, bail can be applied in the High Court ordinary registries, but that cannot be argued to curtail such powers from the Corruption and Economic Crimes Division of the High Court because this Court is crowned with two caps that is, of the "High Court" as well as that of the Corruption and Economic Crimes Division of the High Court.

Supposedly, tracing the matter back to history, formerly, economic cases were conducted by way of "sessions". Under the circumstances where cases are conducted through "sessions", it was uncertain as at what time such "sessions" would be conducted by the Economic Crimes Court, the only Court designated to determine economic offences. Purposively, leaving such stance as it stands will outrightly defeat the spirit behind establishment of the Corruption and Economic Crimes Division of the High Court as a special forum to address corruption and economic crimes.

Before the amendments vide the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016, it was proper and sensible for bail applications to lie in the High Court for the uncertainties as to when the said economic sessions were to be conducted unlike the present where this Court is operational within fourteen sub registries all over the country as correctly submitted by Dr. Lamwai and Mr. Magafu for the applicants.

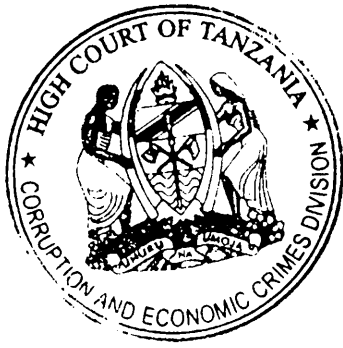
Moreover, no matter what stands the position be it deliberate or inadvertent, it will be a bizarre creation of the law as correctly submitted by Dr. Lamwai that is, to create this special Division of the High Court


vesting it with jurisdiction to hear trials but seizing it the jurisdiction to hear bail applications. Jurisdiction to determine miscellaneous applications was also in the mind of the makers of the Economic and Organized Crimes Control (The Corruption and Economic Crimes Division) (Procedure) Rules (GN No.267 of 2016) in construction of title and address of the Court in terms of Rule 6 of such Rules.

It is from the above this Court also is inclined to subscribe to the findings of the Court of Appeal of Tanzania in the cited case of **Joseph Warioba vs. Stephen Wassira and Another** (supra) towards a "purposive approach meaning looking at the legislative purpose underlying the provision. From the above in unison, this Court finds the raised Preliminary Point of Objection to be non meritorious in law though objective.

This Court leaves to the Government for the required procedure to have the pointed out anomaly addressed within the intended amendment for certainty in bail applications especially in matters which their value exceeds ten million but triable by the subordinate Court, that is, of the value less than one billion Tanzanian shillings. Meanwhile, all bail applications for matters above ten million Tanzanian shillings and trial above one billion Tanzanian shillings should proceed before this Court. Therefore, the application for bail pending trial should proceed on merits.

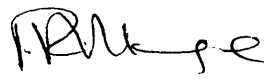
Order accordingly.




R.K. MKUYE
JUDGE
14/11/2016

Ruling delivered in open court on this 14th day of November, 2016 in the presence of Mr. Roman Lamwai while also holding brief for Advocate Magafu for the first applicant and in presence of Mr. Vitalis learned Principal State Attorney for the respondent Republic




R.K. MKUYE
JUDGE
14/11/2016