

IN THE HIGH COURT OF TANZANIA
THE CORRUPTION AND ECONOMIC CRIMES DIVISION
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
MISC. ECONOMIC CAUSE NO. 51 OF 2017

KAGWA ANSI LUOGA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

5/01 & 11/01/2018

Korosso, J.

The Ruling recounts the application filed by the applicant, Kagwa Ansi Luoga who is an accused person in a case pending at Ifakara District Court, Economic Case No. 9 of 2017. The application is filed with a certificate of urgency and supported by an affidavit sworn by the applicant himself. The relief sought is that the Court be pleased to grant bail to the applicant pending trial and makes orders as may deem fit to grant in the interest of justice.

The Respondents on being served the application filed a counter affidavit deposed by Hilda Kato Mkunna State Attorney whereby at paragraph 7 alluded to the certification by the Director of Public Prosecution that granting of bail to the applicant is likely to prejudice the safety and interest of the Republic. The Respondents on the 15th of December 2017 also filed a certificate

drawn and signed by Biswalo Eutropius Kachele Mganga, Director of Public Prosecutions objecting to grant of bail to the applicants on ground that grant of bail will prejudice the interest of the Republic.

At the hearing of the application, Mr. Fred Sanga Learned Advocate for the applicants in amplifying the prayers sought by the applicants, prayed that the Court adopt the affidavit supporting the application and advanced the fact that bail is the right of an accused person such as the applicant citing the holding in **DPP vs Daudi Pete** (2004) TLR 250 to cement this position and that it was in line with the contents of Article 13(6)(a) and (b) of the URT Constitution. Arguing that from this, it is clear that the right to bail is a constitutional right. The counsel contended that in **Daudi Pete's case** (supra), the DPP had filed a certificate objecting to grant of bail under section 148 of the Criminal Procedure Act, Cap 20 RE 2002 (CPA) arguing that the said provision is similar in content to section 36(2) of the Criminal Procedure Act, a section used by the DPP to file a certificate objecting to grant of bail to the applicant in the case on hand. That without doubt section 36(2) should also be seen to be unconstitutional by virtue of the decision in **Daudi Pete's case**.

The applicant's counsel argued further that, since section 36(2) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 (as amended) (EOCCA) is unconstitutional then the DPP's certificate should be disregarded especially because the DPP also failed to advance any reason or show how the interests of the

Republic will be prejudiced. The applicants therefore prayed for the Court to admit them to bail and not to give any consideration to the DPP certificate objecting to grant of bail. That the applicant is ready to fulfill conditions provided by the Court if it grants bail to the applicant.

For the respondents who were represented by Mr. T. Majigo and Ms. Hilda Kato learned State Attorneys respectively, they prayed for dismissal of the application for want of merit. Arguing that the applicants have failed to convince the Court to exercise its discretion to grant bail. That grounds submitted to move the Court to discard the DPP certificate before the Court have no legal standing. That the certificate before the Court was drawn by the DPP under section 36(2) of EOCCA Cap 200 RE 2002 and certifies that grant of bail to the applicant will prejudice interest of the Republic. That it relates to a pending case at the District Court of Ifakara and thus that the certificate conforms to the conditions prescribed by case law, specifically ***DPP vs. Ally Nuru Dirie and another vs Rep*** (1988) TLR 252 where at pg 259 the three conditions were prescribed and the said conditions were considered and adopted in the case of ***DPP vs. Li Ling Ling*** Criminal Appeal No. 508 of 2015 at pg.15. That the Court of Appeal stated that where the certificate has been filed then the Court need to not proceed with determination of hearing the application.

The respondents also challenged the assertion by the applicants counsel that section 36(2) of the EOCCA is

unconstitutional stating the present Court is not a proper forum to address the issue of unconstitutionality of a provision that the applicants to venture this in a proper manner if they so required. That in any case the High Court had an opportunity to deliberate on this in the case of **Gideon Wasonga and 3 others vs Attorney General and 2 others**, Misc. Civil Cause No. 14 of 2016 and found section 36(2) not to violate any constitutional provision.

Bearing in mind the position in this case, that is the filed certificate by the Director of Public Prosecutions objecting to grant of bail to the applicant, we are guided by the holding first in the case of **Gideon Wasonga** (supra) that the provision empowering the DPP to issue the same that is section 36(2) of EOCCA is constitutional (see pg. 27). The holding in **Daudi Pete's case** (supra) cited by the applicants counsel we hold that is distinguishable as it related to a certificate objecting to bail under Section 148(4) of the Criminal Procedure Act. Without doubt the two provisions also differ somewhat in content and also are from different legislations. We are thus inclined to be persuaded by the holding of this Court which addresses the constitutionality of section 36(2) of EOCCA which we find relevant to the case on hand.

At the same time guided by the decision in **Ally Nuru Dirie's** case (supra) adopted in **Li Ling Ling case** (supra) that upon filing of the certificate by the DPP objecting to grant of bail and on being satisfied on jurisdiction to hear and determine a bail application, a Court should venture into satisfying itself on the validity of the

certificate. The conditions for validity of DPP's certificate enounced are that;

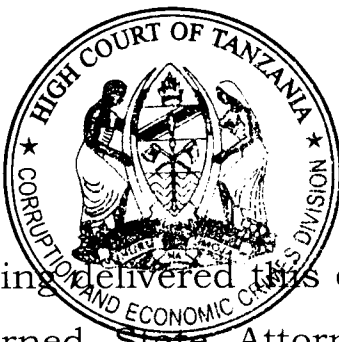
- "i. The DPP must certify in writing and*
- ii. The Certificate must be to the effect that the safety or interests of the United Republic are likely to be prejudiced by granting bail in the case; and*
- iii. The certificate must relate to a criminal case either pending trial or ending appeal"*

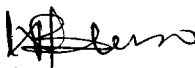
Therefore looking at the Certificate by the DPP objecting to bail in this case, I find that it is Biswalo Eutropius Mganga the Director of Public Prosecution who has certified and it is in writing and thus fulfilling condition number one. From the wording in the certificate stating, *"Do hereby certify that Kagwa Ansi Luoga who is the accused in the above mentioned case... (Réferred to as Economic Crime Case No. 09 of 2017 in the District court of Ifakara) should not be granted bail on the ground that the interest of the Republic will be prejudiced"*. It is clear that this fulfills condition number 2 and 3.

The other issue is that in ***Ally Nuru Dirie's case***, the Court held that the DPP when filing the said certificate is not required to provide explanation on the interest of the Republic expected to be prejudiced. Therefore from this holding, the applicants counsel argument that the Court should disregard the DPP certificate for failure to provide reasons or explanation does not hold water. This is because it is not grounded on any legal provision as the relevant provision does not outline or demand for the DPP to provide any

such information or notification to the other party of his intention. Neither section 36(2) and (3) of the EOCCA demand for such an explanation anyway.

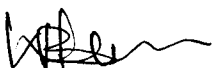
Consequently, having found the certificate by the DPP to be valid, we refrain from granting bail to the applicant. The Certificate life will extend in accordance with section 36(3) of the Economic and Organized Crime Control Act, Cap 200 RE 2002. Ordered.




Winfrida B. Korosso
Judge
11th January 2018

Ruling delivered this day in Chambers in the presence of Ms. Kato, Learned State Attorney and in the absence of the applicant's advocate or the applicant. The DR is directed to ensure service of the Ruling to the Learned Advocate for the Applicant and the applicant.




Winfrida B. Korosso
Judge
11th January 2018