

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA**

**THE CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**AT SHINYANGA SUB REGISTRY**

**Misc. Economic Cause No. 5 Of 2018  
(Originating from Economic Case No.40 of 2017  
In the District Court of Bariadi at Bariadi)**

**MAKONGOLO BUDODI @ MAKONGOLO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

Date of last Order:- 15/5/2018

Date of Ruling:- 16/5/2018

**RULING**

**F.N. Matogolo, J**

Makongolo Budodi, the applicant in this application, was on 05/10/2017 granted bail by this court in Economic Case No. 40 of 2017 pending in the district court of Bariadi. However he was unable to fulfill the bail conditions imposed. He has filed this application asking this court to

vary the bail conditions so that his relatives who reside in Mara region could be allowed as sureties for him. He also prayed to be allowed to deposit in court evidence of ownership of immovable property which is not (sic) certified. As usual, the application is by chamber summons accompanied by an affidavit of the applicant. The application is made under Sections 36 (1) and 29 (4) (d) of the Economic and Organized Crime Control Act, [Cap. 200 R.E 2002]

The said chamber summons and the accompanying affidavit was served to the respondent who filed counter affidavit taken by Solomon Lwenge, Senior State Attorney. The respondent also filed Notice of Preliminary Objection containing three points of objection.

At the hearing the applicant appeared in person unrepresented. M/S Pendo Makondo learned Principal State Attorney appeared for the respondent/ Republic.

As there is preliminary Objection on point of law the same should be resolved first. In arguing the objection M/S Pendo Makondo submitted that the applicant has filed an application to vary conditions for bail. But he did not properly move this court as he did not cite proper provisions. She said the applicant cited sections 36 (1) and 29 (4) (d) of the Economic and Organized Crime Act (the Act). But these provisions are

in respect of bail application and not for this court to vary the conditions for bail.

In the second limb of objection, the learned Principal State Attorney argued that the applicant had previously filed bail application in Economic case No 3/2017 which was heard on 5/10/2017, the application was granted in which bail conditions were set. She said the applicant cannot bring similar application only after fail to meet bail conditions, and now he is coming with bail conditions of his own choice. She said by virtue of section 37 of the Act, the court can vary conditions for bail if brought by the law officer or prosecuting officer. Also section 150 of the Criminal Procedure Act, [Cap. 20 R.E 2002], provides circumstances under which conditions for bail can be varied, and this can only be done if the application was made by the prosecuting officer or police officer. The learned Principal State Attorney submitted that on the basis of those provision she cited, and what she has submitted, the application should not be considered. She emphasized her point by citing the decision of the Court of Appeal in ***Sylvester Hillu Dawi & Another vs. DPP. Criminal Appeal No. 250/2006 CAT DSM*** (Unreported).

But she further submitted that under section 36 (4) (b) of the Act, the law prohibits for the applicant to be granted bail if he was previously granted bail but failed to comply with those bail conditions.

Regarding the third limb of objection, M/S Pendo Makondo stated that the applicant's affidavit is incurably defective in the verification clause.

But also contains prayers and legal arguments by citing legal provisions in paragraph 2. The verification clause is defective, the applicant states that what he has stated in paragraphs 1, 2, 3, 4, 5, 6 and 7 are true to the best of his knowledge and belief. But in the applicant's affidavit there is no paragraph 4, so he has verified fact which is not even present in his affidavit. The learned Principal State Attorney therefore prayed for their objection to be sustained.

On his part the applicant while responding to the raised objection he said, he is still in the prison for his failure to fulfill the bail conditions set by this court after being granted bail. He said this is because he is not the resident of Simiyu region where he was arrested. But he has relatives in Mara region who are willing to stand as sureties for him.

Regarding citing improper provisions he said this is because of ignorance of the law and he was unable to respond to the legal provisions cited and their requirements.

On the verification clause, and verifying non – existing paragraph, he said that is typing errors. That the prison officers are those who prepare the application documents for them. He only reiterated his earlier prayer for this court to relax the bail conditions and permit his relatives from Mara region to bail him. M/S Pendo Makondo had nothing to rejoin.

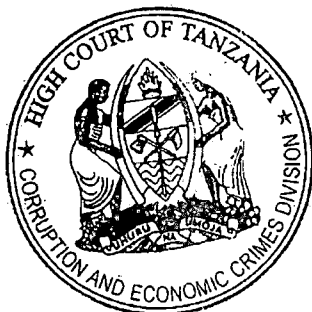
It is a cardinal principle that in order for a court to step in and hear an application, it must be properly moved. This can only be possible where the applicant has cited proper provisions as enabling provisions for the court to do what is asked to do. There is a litany of authorities to this legal position including **China Henan International Co-operation Group Vs. Salvand K.A. Rwegasira [2006] TLR220**. But the applicant did not cite provisions relevant to the application he has made to this Court. This Court is therefore not properly moved as it has no leg to step in and consider his application.


As to the third limb of objection, I have gone through the affidavit in question, it is true that in paragraph 2 there are prayers, and the applicant has cited legal provision which is not permitted in affidavits to be used Court proceedings. Again in the complained verification clause, the applicant has mentioned paragraph 4 which is not in the affidavit. Although the applicant has said that is mere typing error, but this being an affidavit, it cannot be rectified by mere words of mouth from the applicant that it was typing error.

As to whether or not this Court lacks jurisdiction to vary bail conditions, I must confess that I am not quite sure of the position of the law to this proposition. The learned Principal State Attorney has referred to this Court Sections 36(4)(b), 37 of the Act and Section 150 of the CPA. She also cited the decision in **Sylvester Hillu Dawi and Another** (supra).

I have gone through the above cited provisions. But the circumstances explained under S. 36(4) (b) are not the same like what applicant failed comply in this case, but refers to conditions imposed by the Court, and after the applicant is released on bail he fail to comply with the conditions given. However the conditions given in both S.37 of the Act and S. 150 of the CPA are in disfavour of the applicant. Only S. 148(3) of the CPA what is in his favour, but this also apply where the bail condition was set by a subordinate Court. But on the basis of this provision, and if one apply purposive interpretation, this Court can also vary bail conditions where circumstances justify for such variation of bail conditions. However due to the above discussed shortcomings in the applicant's application, this Court cannot reach to that stage. It follows therefore that, provided the application is incurably defective, the same is hereby struck out.

Ordered accordingly.



  
**F.N. MATOGOLO**  
**JUDGE**  
**16/5/2018.**