

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
THE CORRUPTION AND ECONOMIC CRIMES DIVISION
DODOMA SUBREGISTRY
AT DODOMA**

MISC. ECONOMIC CAUSE NO. 10 OF 2018

*(Originating from Economic Case No. 1 of 2018 of the
Resident Court of Dodoma at Dodoma)*

**1. SANDE MICHAEL CHALO
2. ZAKAYO ROBERT NADOO.....APPLICANTS**
VERSUS
THE REPUBLIC.....RESPONDENT

RULING

17/5 & 18/5/2018:

F. N. MATOGOLO, J:

Sande Michael Chalo and Zakayo Robert Nadoo who are applicants in this application along with other two, Emmanuel Ernest and Msafiri Bakari they are arraigned in the Court of Resident Magistrates' of Dodoma charged with four counts;

The first and second counts, which are in respect of unlawful possession of Government Trophy and leading organized crime respectively are in respect of all four accused persons.

The third and fourth counts, for unlawful dealing in Trophy respectively, are preferred against the 1st, 2nd and 4th accused persons.

The applicants have filed this application to this Court praying to be released on bail pending their trial in Economic Case No. 1 of 2018 now pending before the Court of Resident Magistrate's Dodoma.

The application is by chamber summons supported by an affidavit taken by Nkumuke Simon, Yongolo, Advocate. The application was brought under Section 29 (4) (d) and Section 36 (1) of the Economic and Organized Crimes Control Act [Cap. 200 R. E. 2002] (the Act) as amended by the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 and Section 148 (1) and (5) of the Criminal Procedure Act, Cap. 20 R. E. 2002.

The respondent was served with the chamber summons and the accompanying affidavit. He filed counter affidavit in which he disputed contents of paragraph 4 of the applicant's affidavit.

At the hearing, the applicants were represented by Mr. Nkumuke Simon Yongolo and Mr. Elias Machibya learned advocates. M/s Magoma learned State Attorney appeared for the respondent Republic. Arguing the application, Mr. Nkumuke Simon

Yongolo learned advocate stated that the applicants were arrested for the first time in 2014 and charged with Economic case No. 5/2014. On 16th November, 2016, the Director of Public Prosecutions entered *Nolle presequi* on the said charge. The applicants were rearrested and charged in Economic Case No. 07/2016 which was dismissed for want of prosecution on 29th December, 2016. On the same date while still in the Court premises, the applicants were re-arrested and recharged with the present case.

That the applicants were informed by the Court of Resident Magistrates that, that Court is not a trial Court for their case and therefore it could not grant them bail. They were advised to come to this Court with their bail application.

Mr. Yongolo learned advocate prayed that the applicants be released on bail for the offences they are charged. He said the applicants are residents of Dodoma Municipality with reputable behavior and that they will be available when required.

On her part, M/s Magoma learned State Attorney stated that after been served with the chamber summons and accompanying affidavit they filed counter affidavit disputing contents of paragraph 4 of the affidavit.

The learned State Attorney submitted further that by the nature of the charges preferred against the applicants and the gravity of

the charged offences and relevant laws she prayed that the applicants should not be granted bail because the Director of the Public Prosecutions has filed a certificate denying them bail on the ground that if granted bail the safety and interests of the Republic will be prejudiced. It was unfortunately that the said certificate was not filed in Court although in the counter affidavit it is indicated that the same was filed. The learned State Attorney then produced the certificate in Court. But this gave rise to the advocate for the applicants to ask for adjournment of the case for a short period so that they could go through the said certificate and prepare themselves to argue. Hearing was adjourned and resume after half an hour where Mr. Elias Machibya learned, advocate submitted, first that the certificate in question is not valid because it is not relating to the case which the applicants are facing in the subordinate Court, the basis of this application. He argued that the applicants are facing Economic Case No. 01/2018. It is from that case they are praying to be released on bail. But the Director of the Public Prosecutions in his certificate he mentioned Economic case No.28 of 2017 of the Court of Resident Magistrate Dodoma. That S. 36(2) of the Act gives power to the DPP to file a certificate objecting bail to accused pending trial of the case accused is facing. The case therefore must be pending trial. The learned advocate cited the case of ***Ally Nur Dirie V. The DPP [1988] TLR 252***, to emphasize his point and said the Court of Appeal set three conditions to be fulfilled for the certificate of the DPP to be valid.

The learned advocate said the certificate in question did not fulfill the third condition and thus it is invalid. Thus there is no valid certificate precluding this Court to grant the application. His second argument is in respect of the words "pending trial". **In Ally Nur Dirie Case**, the words were defined to mean that the case must be pending trial in a court which has competent jurisdiction to acquit or convict the accused person. But the certificate in question is in respect of the case which is for mention only and the applicants were not given opportunity to plead thereto. He therefore said the certificate was prematurely filed. And prayed to this Court to grant bail to the applicants. In rejoinder in respect of the DPP certificate, M/s Magoma learned State Attorney basically conceded that the case number mentioned in the certificate, is Economic Case No. 28/2017 which is different to Economic Case No. 01/2018 which the applicants are facing in the subordinate Court. But she said that is just typing error. But the certificate still mentions the names of the applicants who are charged in Economic Case No. 01 of 2018. That these are the targeted persons. She therefore asked this Court to take the applicants as the ones being targeted despite the typing error in the case number.

As to the second argument, she said the certificate must relate to a case pending trial. The learned State Attorney is of the view that what the learned advocate has said is the problem in interpretation. But they believe the case against the applicants which is before the Court of Resident Magistrates Dodoma is pending trial.

Given the above rival submissions, it is upon this Court to resolve first, whether the certificate filed by the applicants is valid one and secondly whether the applicants are entitled to bail and thus can be released on bail.

The Court of Appeal of Tanzania discussed the validity of the DPP certificate in ***Ally Nur Dirie case*** (supra) and came out with three conditions which if are complied with, then the certificate of the DPP become valid one and can be acted upon by the Court. These conditions are:-

1. The DPP must certify in writing.
2. The certificate must be to the effect that the safety or interest of the United Republic are likely to be prejudiced by granting bail, and
3. The certificate must relate to a Criminal Case either pending trial or pending appeal.

These conditions for the validity of the DPP certificate were also affirmed by the same Court of the Appeal in the Case of ***DPP V. Li Ling Ling***, *Criminal Appeal No. 508 of 2015*. They were further affirmed in the case of ***Emmanuel Simforian Massawe V. Republic*** *Criminal Appeal No. 252 of 2016*.

There is an argument by the applicants' advocate that the case number mentioned in the DPP certificate is different to that the applicants are facing in the Court of Resident Magistrate of Dodoma. I have gone through the said certificate, the same was written above "**MISC. ECONOMIC APPLICATION NO. 10 OF 2018 (Arising from Economic Case No. 28 of 2017 in the Resident Magistrate's Court of Dodoma Region)**".

It is here the argument by the learned advocate lies. The learned State Attorney reply is that there was typing error. But how can we confirm that it was mere typing error, and not another different case the applicants are arraigned with. However, as the names of the applicants are also mentioned, that can mitigate the error because typing error or slip of the pen frequently occur. But the only question to ask ourselves is, to what extent this can cause injustice or occasion failure of justice.

In the case of **Leila Jalaludin Haji Jamat VS. Shaffin Jalaludin Haji Jamal**, Civil Appeal No 55 of 2003, a similar situation occurred in which the applicant cited a different case number in the Notice of appeal and memorandum of appeal. The preliminary objection was raised by the respondent but the Court of Appeal overruled it and said:-

"... We, are, furthermore, of the settled mind that the error of Citing year 2002 instead of 2001 is a minor curable

defect. We, therefore, overrule ground one of the preliminary objection."

Likewise in the certificate in question the error is minor, and as pointed out above is purely typing error, that alone does not render the certificate invalid.

There is another argument that in order for the certificate to be valid, the case in question must be pending trial. That was held in **Ally Nur Dirie case**, but in **Li Ling Ling case**, the Court of Appeal added that pending trial includes during committal proceedings The Court at pages 14 and 15 of its judgment held:-

"In our considered view, the words "pending trial" under subsection (2) of Section 36, if read in the context of Subsection (7) of the same Section, cannot be taken to have been meant to defeat the effect of the latter provision. **The latter Subsection gives power to the DPP to file a certificate in any Court which has jurisdiction to entertain and determine an application for bail."**

The certificate in question cannot therefore be faulted in any way, it is therefore valid worth to be recognized by this Court. In addition, as I have pointed out above the applicants were charged along with other two, whose application for bail was blocked by the certificate filed by the DPP. It is unfortunately that the present

applicants were not included in that application otherwise their fate would have been determined long ago.

Having stated as shown above, and, as the position of the law is that once the DPP files a certificate in Court then accused cannot be granted bail, the present application cannot be entertain until when the circumstances will change or where the filed certificate is withdrawn.

Ordered accordingly.



F. N. Matogolo
F. N. MATOGOLO,
JUDGE
18/5/2018