

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

MISC. ECONOMIC CAUSE NO. 11 OF 2018

*(Originating from Economic Case No. 17 of 2018 of the
District Court of Dodoma at Dodoma)*

MANG'ATI MKWAWI.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

17/5 & 18/5/2018:

F. N. MATOGOLO, J:

This ruling is in respect of bail application filed by the applicant one Mang'ati Mkwawi who is facing a charge of unlawful possession of Government Trophies in the Court of Resident Magistrate of Dodoma Region. It was alleged in the charge sheet that on 18th day of March, 2018 at Mohema village Chamwino District, the applicant was unlawfully found in possession of white bearded Wildebeest tail and ground pangolin scales all valued at Tshs. 3, 634, 333/05 the

property of the United Republic of Tanzania without a permit from the Director of Wildlife.

Through his advocate, Mr Sostenes Peter Mselingwa, the applicant has filed this application praying to be admitted on bail. The application is by chamber summons supported by an affidavit taken by Sostenes Peter Mselingwa. The same was made under section 29 (4) (d) and Section 36 (1) of the Economic and Organized Crime Control Act (Cap. 200 R. E. 2002) as amended by the Written Laws (Miscellaneous Amendments) Act, (sic) No. 6 of 2016.

The respondent was served with the chamber summons and the accompanying affidavit but opted not to file counter affidavit. However during the hearing the learned State Attorney who appeared for the respondent produce a certificate by the Director of the Public Prosecution denying bail to the applicant.

At the hearing the applicant did not attend but he was represented by Mr. Mselingwa learned advocate, and Ms. Magoma learned State Attorney appeared for the respondent.

Mr. Mselingwa on behalf of the applicant first prayed for the affidavit in support of the application be adopted and form part of his submission and prayed for the applicant to be admitted on bail. The learned advocate submitted further that the applicant appeared for the first time in the Court of Resident Magistrates

Dodoma on 06/04/2018. He was not required to enter plea. He was told that Court has no jurisdiction to grant bail to the applicant, that is why they filed this application to this Court. That as this Court has jurisdiction for Economic Cases it can grant bail to the applicant on the condition commensurate to the charge offence.

On her part Ms. Magoma told this Court that they intended to object bail. They have a certificate by the Director of Public Prosecution but they delayed to file the same. They object bail to the applicant because the safety and interest of the Republic is likely to be prejudiced in granting bail to the applicant. The learned State Attorney submitted in Court the said certificate.

However Mr. Mselingwa advocate said the said certificate was filed prematurely because the case which applicant is facing in the subordinate Court is still under investigation and that Court was not conferred with jurisdiction to hear the case. That Section 36 (2) of the Economic and Organized Crimes and Control Act as amended clearly states that the certificate can be filed where there is a case pending for trial. Mr. Mselingwa supported his argument by citing the case of ***Ally Nur Dirie Vs. DPP (1988) TLR 252*** in which the Court of Appeal set three conditions for the Director of the Public Prosecution certificate to be valid. But among those three conditions only two are valid.

1. The certificate must indicate that safety and interest of the Republic are likely to be prejudiced.

But he said he believe for the offence which the applicant is charged, it may not affect the safety and interest of the Republic by admitting the applicant on bail.

But secondly in order to be valid, the certificate must relate to case against the accused which is pending trial.

But for the case in which the applicant is facing is still under investigation and not pending trial.

Another thing Mr. Mselingwa has noted is that they did not expect that the Government document would be in a plain paper not indicating that it is from the Government office and reflecting the position of the officer who signed it. Mr. Mselingwa prayed for the certificate not to be honored and that their application for bail should be granted.

In her rejoinder in respect of the first argument, Ms. Magoma submitted that it is not true that the certificate was prematurely filed simply because the case is not pending trial. She said that is misinterpretation of the provision of the words "pending trial". But the case pending trial is any case whose trial has not started. On that basis she said their certificate was valid and can be acted upon by the Court. On the argument that the certificate is not in crested paper Ms. Magoma learned State Attorney conceded to that.

But she said the crested papers are out of stalk for a long time. And they are forced to use plain papers. But she said the certificate in question is signed by the Director of the Public Prosecutions and this court may satisfy itself by looking at the Director of the Public Prosecutions signature which is usually used in his official documents. She therefore asked this Court to take the said certificate as valid one.

The only controversy in this case is whether or not the Director of the Public Prosecutions certificate filed in this case is valid one. As Mr. Mselingwa learned advocate has stated, for a certificate to be valid the three conditions which were set by the Court of Appeal in the case of **Ally Nur Dirie** (supra) must be complied with. These conditions are as follows:-

1. The Director of Public Prosecutions must certify in writing.
2. The certificate must be to the effect the safety or interests 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.

Mr. Mselingwa has no problem with the first two conditions. But for the third condition he said was not complied with as the case

applicant is facing is not pending trial, it is still under investigation. On her part the learned State Attorney said it is just interpretation problem. The phrase "*pending trial*" was discussed by the Court of Appeal in the case of **DPP V. Li Ling Ling, Criminal Appeal No. 508 of 2015**, in which the issue of filing the DPP certificate prematurely was considered. In this case apart from what was decided in **Ally Nur Dirie** that the certificate must relate to a criminal case either pending trial or pending appeal, the same Court in **Li Ling Ling** Case added that pending trial include during committal proceedings. The Court at pages 14 and 15 of its judgment has this to say:-

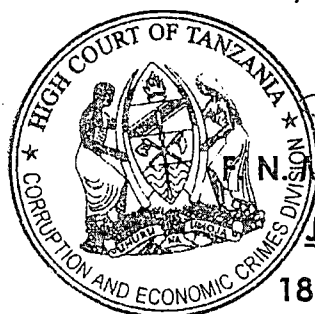
"in our considered view, the words "pending trial" under subsection (2) of section 36 if read in the context of subsection (7) of the same section cannot be taken to have been meant to defeat the effect of the latter provisions. The latter subsection gives power to the DPP to file a certificate in any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

By that decision of the Court of Appeal above cited, the issue of prematurity of the DPP certificate cannot arise. It is obvious that even the third condition which Mr. Mselingwa had doubted it, was complied with and thus making the certificate valid under the law.

There is also another argument which Mr. Mselingwa learned advocate has raised it that the certificate under scrutiny is not on

crested paper. The reply by the learned State Attorney is that they are running short of these crested papers for a long time now, and in all their activities they are using only plain papers. I think this need not to detain us longer as those papers are supplied stationary, it is possible for them to be out of stock but that alone cannot halt the activities in the Attorney General's Chambers, that is why they are using ordinary papers without the crested emblem. I therefore do not see any serious defect that may render the DPP certificate in question not valid. The same is valid as it has passed the validity test.

That being the case therefore, and on the basis of the two decisions of the Court of Appeal in ***Li Ling Ling*** and the recent decision in ***Emmanuel Simfarian Massawe Vs. The Republic, Criminal Appeal No 252 of 2016*** this Court cannot proceed to determine the application, the same is hereby struck out.

 *M. N. Matogolo*
M. N. MATOGOLO
JUDGE
18/5/2018