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

MISC. ECONOMIC CAUSE NO. 12 OF 2018

(Originating from Economic Crimes Case No. 53 of 2017 - Resident Magistrate's Court of Dar es Salaam at Kisutu)

1. BENEDICT VINTUS KUNGWA
2. JUMANNE RAMADHANI CHIMA @JIZZO @JK
3. AHMED AMBARI NYAGONGO } **..... APPLICANTS**
4. PIUS VICENT KULAGWA

VERSUS

THE REPUBLIC..... RESPONDENT

Date of Last Order:- 18/05/2018
Date of Ruling:-21/05/2018

R U L I N G

W.B. KOROSSO, J

Before this Court for Ruling is an objection registered by the applicants against the competence of the certificate filed by the Director of Public Prosecution objecting to grant of bail to the applicants emanating from an application filed by the above named applicants in the form of a chamber

summons supported by an affidavit sworn by Joseph Sayi Mabula, learned advocate purporting to duly represent the applicants; Benedict Vintus Kungwa (1st applicant), Jumanne Ramadhani Chima @Jizzo @JK (2nd applicant), Ahmed Ambani Nyagongo (3rd applicant) and Pius Vicent Kulagwa (4th applicant). The application is filed pursuant to section 29(4)(d) and 36(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 (hereinafter referred to as "the Act" or "EOCCA").

On the other side, the Respondent Republic upon service of the application, filed their affidavit purporting to counter the applicants affidavit, sworn by Candid Joseph Nasua, learned State Attorney and also a Certificate issued by the Director of Public Prosecutions under section 36(2) of EOCCA objecting to grant of bail to the applicants on ground that grant of bail to the applicants will prejudice the interest of the Republic.

In the matter before the Court for consideration and determination, the applicants were represented by Mr. Josephat Mabula, learned Advocate and the Respondent Republic were represented by Ms. Elizabeth Mkunde, Ms. Tully Helela and Ms. Nalingwa Sekimanga, learned State Attorneys respectively. The Court appreciates the well argued submissions and cases cited to support the counsels assertions which provided great insights into their respective positions and the applicable law and procedure.

During the hearing of the application, the applicants through their counsel filed an oral objection to the DPP's certificate objecting to grant of bail to the applicants filed by the respondents. The applicants counsel, whilst conceding that under section 36(2) of the EOCCA the powers of the DPP to file a certificate objecting to bail when he has reason to believe that grant of bail to accused persons will prejudice the safety and interest of the Republic cannot be challenged, contended that, application of the DPP's power, has to go hand in hand with what has been expounded on the subject by judicial decisions. The applicants submitted further that the Court find section 148(4) of the Criminal Procedure Act, Cap 20 RE 2002 (hereinafter referred to as "CPA") *pari materia* with section 36(2) of the EOCCA in view of the similarities in content, context and effect when deliberating and making a determination.

When amplifying his argument on the issue of application of the doctrine of provisions or statutes *pari materia*, the applicants counsel asserted that section 36(2) of EOCCA should not be interpreted differently with section 148(4) of the CPA when determining matters related to bail. Submitting that the Court of Appeal had an opportunity to discuss this matter in various cases. For instance, in the case of ***Kimbute Olipia vs. Rep,*** Criminal Appeal No. 3 of 2011 (unreported) where it was held, when discussing section 127(1) of the Evidence Act, Cap 6 RE 2002, the Court made reference to a book by G. P. Singh, ***Principles of Statutory Interpretation***, 9th Edn pg. 3. That this aspect was also endorsed in the

case of ***Antonio Zakaria Wambura and Timothy Daniel Kilumile vs. Rep.***, Misc. Econ. Crime Cause No. 1 of 2018, HCT at Mwanza at pg 17-18, that while interpreting a section; "*the Statute as a whole, the previous state of the law, other statutes in pari materia, general scope of the statute and the mischief that it was intended to remedy*" must be considered.

The counsel further stated that, taking this holistically meant that the Court emphasized the need to read a section in its context, to read the statute as a whole, and also previous state of the law and other statutes in *pari materia* have to be deliberated. That the Court of Appeal in Arusha, stated that similar provisions should be interpreted *pari materia*. That again, in the case of ***Athumani Salum vs. Attorney General***, Civil Case No. 83 of 2010 (unreported) which was quoted with approval in the ***Antonio Zakari Wambura's case*** (supra) where the Court stated that; "*statutes or provisions pari materia are construed together*".

Counsel for applicants argued further that, from the said cited decisions, having regard to the fact that section 36(2) of EOCCA used to issue a certificate for objection of bail does not differ in content to section 148(4) of CPA. That since section 148 (4) of CPA has been found and declared to be unconstitutional and void by the Court of Appeal in the case of ***Attorney General vs. Jeremiah Mtobesya***, Civil Appeal No. 65 of 2016 (unreported). Therefore from this holding then it is clear it means that section 36(2) of EOCCA is also no longer valid by the principle of *pari*

materia. That the purpose of both of the provisions, that is section 36(2) of EOCCA and section 148(4) of CPA is to deny bail to accuseds/applicants through issuance of a certificate by the Director of Public Prosecutions by the use of the same words that it will prejudice the safety and interests of the Republic. It was the applicants prayer therefore, that the filed certificate in the current application be expunged for reasons that it contravenes the principle of interpreting similar provisions in *pari materia*.

The second argument presented by the applicants was to challenge the wordings used in the certificate, that is, that there should be certification in writing on the words ... *that the interests of the Republic will be prejudiced*. They argued that interpretation of the said wordings as guided by interpretation in Blacks Dictionary, 9th Edn. at pg 258, the word "certify" means to authenticate or verify in writing. The word authenticate is defined as to verify and also to prove that a thing is genuine. That also the word verify has been defined as "to prove to be true", to confirm and establish the truth, to authenticate, to confirm or substantiate by oath or affidavit. From this they argued, therefore the DPP if he is to certify, he has to do this by substantiating through an oath or an affidavit. That the filed certificate by the DPP objecting to bail lacks this and therefore it should be found it has failed to adhere to the requisite requirements of certification, failing to pass the test of authentication as expounded.

The third argument advanced by the applicants counsel was that, the wordings of section 36(2) of EOCCA were one sided, since they empowered the DPP only to object grant of bail where a certificate has been issued and thus removing the powers of the Court in exercising its discretion to grant bail. That there is nowhere in the provision showing how a Court will determine bail once a certificate has been filed. At the same time, on the part of the accused person, there is nowhere he/she is given the same powers or an opportunity to challenge the certificate. That the provision does not provide a procedure for the Court to determine bail once the certificate has been filed. That in the case of ***Jeremiah Mtobesya*** (supra) at pg. 68 of the Judgment, the Court endorsed submissions that section 148(4) of Criminal Procedure Act, Cap 20 RE 2002, do not provide procedures for both sides, stating;

"*It is most apparent that the provision is indeed arbitrary. We have already indicated the extent to which the provisions does not prescribe any procedure, let alone one which is reasonable, fair and appropriate to govern the issuance of the DPP's certificate. In the Result, an accused person is not afforded any meaningful opportunity of being heard before he is denied bail by operation of the DPP's certificate*".

That in effect, in view of the contents of section 36(2) of EOCCA with similar wordings and effect upon being filed with Section 148(4) of CPA, they prayed the Court use similar interpretation as used by the CAT in

interpreting section 148(2) of CPA and find that, by filing a certificate to object bail to the applicants in the present case, the Court has been denied an opportunity to exercise the mandate to consider and determine bail application before it and the accused denied an opportunity to challenge the same. Therefore the applicants prayed the certificate be expunged for being based upon an arbitrary provision and the Court proceed to hear the bail application.

The fourth reason for challenging the certificate filed objecting to grant of bail to the applicants, as is that the charges against the applicants are bailable. That for bail to be denied, the DPP must prove that the applicants are dangerous to national security, they cemented this argument by citing the Court of Appeal decision in ***Daudi Pete vs. Rep,*** (1993)TLR 24 where it was observed that for a person to be denied bail, he must be a threat to national security. That the charges against the applicants are not treason, Terrorism or related offences or any offences which endanger public safety or interests. The applicants contended further that the DPP certificate filed on 21/3/2018, which was six days after the filing of the counter affidavit shows that was not the case.

The applicants argued further that there were no reasons provided for delay to file the certificate after the respondents filed and served the applicants the counter affidavit. That the offence charged is said to have occurred in 2016, if there was any fear of applicants compromising the

safety and interests of the Republic why wait for such a long time to file the certificate since 2016? The case of ***MT 80186 Henry Mwisongo vs. Rep.***, Criminal Application No. 19 of 2008 (unreported) which was quoted with approval in ***Antonio Wambura's case*** (supra) was cited. In this case the Court having considered the circumstances pertaining to that case, found that the circumstances expressed fear on the part of the DPP in filing the certificate, a fear which they found to be unjustifiable and without cause and proceeded to grant bail. The applicants therefore submitted that this Court find the circumstances in the current case and in ***MT 80186 Henry Mwisongo's case*** (supra) and ***Antonio Wambura case*** (supra) to be the similar, in view of the respondents failure to file the certificate as early as possible, or together with the counter affidavit, that the Court therefore discard consideration of the certificate and proceed with consideration of the bail application before the Court.

For the Respondent Republic, Ms. Nalingwa Sekimanga and Ms. Elizabeth Mkunde, learned State Attorneys submitted and presented their responses. In general they prayed that the Court find all the objections raised by the applicants to be devoid of merit. Arguing that a certificate issued by the DPP objecting to bail is a legal matter. The respondents decided not to respond sequentially to the point raised by the applicants counsel but to respond generally while enroute touching on specifics. The learned State Attorney premised by submitting that, once the DPP files a certificate that objects to grant of bail to accused persons the issue for the

Court consideration remains to be the validity of the certificate. Stating that this was held in ***DPP vs. Li Ling Ling,*** Criminal Appeal No. 508 of 2016 (unreported) which adopted the holding in the case of ***DPP vs. Ally Nur Dirie and another*** (1988) TLR 252 which set three conditions to determine the validity of the DPP certificate. First, that the DPP certificate must be in writing; Second, the Certificate must be to the effect that the safety and interest of the United Republic are likely to be prejudiced by granting bail in the case; and third, the certificate must relate to criminal case pending trial or pending appeal and the fourth condition was added by the holding in the case of ***Emmanuel S. Massawe vs. Rep***, Criminal Appeal No. 252 of 2016, CAT Dar es Salaam, that the DPP certificate can only be invalid where it is proved that he acted in bad faith or abuse of Court process.

It was thus, the respondent's contention that having regard to everything advanced, the certificate filed by the DPP against the applicants complied to all the stated four conditions and it was therefore valid. The learned State Attorneys challenged the applicants counsel assertion that the certificate has not been certified, stating that the law has not provided for such certification envisaged by the applicants counsel that there must be an oath or affidavit.

On the issue raised by the applicants that section 36(2) of EOCCA being *pari materia* to section 148(4) of the CPA, they argued that what is before

the Court is a certificate issued under section 36(2) of EOCCA and not under section 148(4) of CPA. That the offence charged against the applicants are economic offences under EOCCA and thus the case cited by the applicants, ***Jeremiah Mtobesya*** (supra) addresses section 148(4) of the CPA and it was thus their prayer that the Court should disregard the applicants submissions since the case is distinguishable. Also the case having dealt with a constitutional issue while what is before the Court and for the Courts consideration is the validity of the certificate by the DPP as provided by cited case law.

On the argument regarding status/provisions *pari materia*, the learned State Attorneys prayed the Court to disregard the applicants' contentions stating that they were not based on law. That the principle of *pari materia* is grounded on interpretation and does not address or go to the existence and determination of existence of provisions. That for section 36(2) of EOCCA to be found unconstitutional, requisite legal procedures must be undergone but todate no Court of law has declared the said provision to be unconstitutional and this was discussed in the case of ***Emmanuel Siforian Massawe*** (supra). They prayed the Court find that the Certificate objecting to bail issued by the DPP be found to have been duly certified and that it has complied with all requisite conditions propounded by case law and it is valid. That the Court be guided by the import of section 36(2) of the EOCCA since that is the relevant provision for the matter before the Court and the case of ***Edward Kambuga vs Rep.*** (1990) TLR was cited

to cement this point, that in matters related to economic offences, the applicable statute is the EOCCA.

There was a brief rejoinder from the applicants through their counsel, reiterating the contents of their submission in chief, finding no additional elements from what is contained in section 36(2) of EOCCA, in the ***Emmanuel Massawe case*** (supra which they contended goes to the similar tests required for section 148(4) of CPA and contended that the certificate is unjust on bailable offences.

It is important to understand that in consideration of all the submissions and prayers advanced by both the counsels for the applicants and the Respondent Republic have been carefully considered including all the cases cited and all matters related to the submission before the Court. Whilst we will try to capture the essence and import of the submissions we will not be able to dwell on each one of them separately but will at times address them specifically where we find important.

We find it important to import the relevant section. Section 36(2) of the EOCCA Cap 200 RE 2002 reads:

36(2) "*Notwithstanding anything in this section contained no person shall be admitted to bail pending trial, if the Director of Public Prosecutions certifies that it is likely that the safety or interests of the Republic would thereby be prejudiced*".

There is also the importance of presenting the conditions set by case law where in a bail application the DPP files a certificate objecting to bail, which was an attempt by the Courts to provide interpretation of the requirements of section 36(2) of EOCCA and also section 148(4) of the CPA, since the cases discussed the certificate issued by the DPP and both these sections provide for this.

The issue of the validity of the Certificate of the DPP has been discussed in various cases and in the case of ***DPP vs Li Ling Ling (supra)*** where the DPP tendered a certificate under section 36(2) of EOCCA objecting to the grant of bail to the respondent on ground that release of bail would likely prejudice the interests of the Republic. The holding of the Court of Appeal was that under section 36(2) of the EOCCA, any Court with jurisdiction to entertain and grant bail in an economic crime case, the DPP is empowered to file a certificate in any court which has jurisdiction to hear and determine an application for bail. That the DPP can only file the Certificate when the case is pending trial. The Court embraced the holding in the case of ***Ally Nuru Dirie and Another*** (1988) TLR 2002 that once the DPP's certificate has met a validity test then the Court shall not grant bail.

Conditions for to test the validity of DPP's certificate enunciated by case law 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 pending appeal

iv. *where it is proved that the DPP acted on bad faith or abuse of Court process (added by Emmanuel Simforian Massawe case (supra))*

The issues for consideration before the Court upon objection registered by the applicants against the Certificate objecting to bail as we understand are as follows: First there is a challenge on the validity of the certificate, for reasons that, the tests for validity propounded by cited cases such as ***Ally Nur Dirie case*** (supra), ***DPP vs Li Ling LIng case*** (supra) and ***Emmanuel Massawe case*** (supra) have not been fulfilled. The applicants contending that the certification requirement has not been complied with, since the proper import of the word "*certification*" which is to authenticate and confirm requires that there must be an oath or affidavit accompanying it for it to be certification. This challenge encompasses many aspects including the challenge that issuance of the certificate should have regard to the seriousness of the offence, and as the counsel put it, offences dangerous to national security.

We find it pertinent to import some of the wordings in the certificate filed before this Court. The Certificate filed and before the Court states:

I, BISWALO EUTROPIUS KACHELE MGANGA, Director of Public Prosecutions, DO HEREBY, CERTIFY that BENEDICT VINTUS KUNGWA, JUMANNE RAMADHANI CHIMA @JIZZO @JK, AHMED AMBARI NYAGONGO and PIUS VICENT KULAGWA who are accused persons in the above mentioned Economic Crime Case should not be granted bail on the ground that the interests of the Republic will be prejudiced".

Below this it is dated 20th day of March 2018 and then signed by Biswalo Eutropius Kachele Mganga, the Director of Public Prosecutions.

The Court has been invited by the applicants to consider carefully when determining whether or not the condition on certification by the DPP has been effected. The definition of "certify" that has been provided by the applicants found in Blacks Dictionary, 9th Edn. That it means; "*to authenticate or verify*" and that this by inference demands for an oath or affidavit, we find the ordinary meaning of the word authenticate or verify is to acknowledge the correctness, to confirm, to validate or to substantiate the same. There being no legal demand provided under the EOCCA or the CPA on modality or formality for certification by the DPP, we find there is no cause for this Court to provide such a format for such certification. Our understanding of the holding of the above case law provided on validity of the certificate, is for the DPP to certify in writing. In the certificate before the Court the certification by the DPP is in writing and by way of what we can say an explicit statement. We thus are of the opinion that the fact that the certificate before the Court expresses the certification by the DPP in

writing as argued by the learned State Attorney shows the condition that "*the DPP must certify in writing*" has been fulfilled. There was no challenge advanced by the applicants on whether or not the certificate fulfils the other three conditions for validity. We shall address those later after discussing the other point of objections by the applicants.

The Second point of objection was the assertion by the applicants counsel that section 36(2) of EOCCA be found unconstitutional by application of the *statute pari materia* principle to section 148(4) of the CPA, which was found to be unconstitutional and void by the CAT in ***Jeremiah Mtobesya's case*** (supra). That since the two provisions all outline or empower the DPP to issue a certificate of bail, then they are *pari materia*. The respondents have objected to this arguing that, the principle of *pari materia* is for purpose of interpretation and not for purpose of determination of existence of a provision. It is a fact that, the Court of appeal in ***Jeremiah Mtobesya's*** case (supra) dealt and specifically addressed the constitutionality of section 148(4) of CPA and found that section 148(4) of the CPA to be unconstitutional and void. This holding was based on the Court being satisfied that the provision eliminates the judicial process in matters of personal liberty and does not have a prescribed procedure or due process within the meaning of Article 15(2)(a) and Article 13(6)(a) of the United Republic of Tanzania Constitution 1977 (hereinafter referred to as "the Constitution") and that the contraventions are not saved by Articles 30 and 31 of the Constitution.

This is clear by the fact that the Court even considered where the provision was imported from that is from section 124(4) of the Criminal Procedure of Zambia (Zambian Code) and that the recommendation for importation of the provision was vide the report of the Judicial Review Commission of 1977. This is also clear from the statement at pg 42 paragraph 2 of the judgment stating;

"*It is noticeable that the Zambian Code provision, as it then stood, was more or less in pari materia with our section 148(4) which under our consideration*".

Having already imported the contents of section 36(2) of the EOCCA in view of the applicants assertion it is important to also import the contents of section 148(4) of CPA. It reads:

"*Notwithstanding anything in this section contained, no police officer or court shall, after a person is arrested and while he is awaiting trial or appeal, admit that person to bail if the Director of Public Prosecutions, certifies in writing that it is likely that the safety or interests of the Republic would thereby be prejudiced; and a certificate issued by the Director of Public Prosecutions under this section shall take effect from the date it is filed in court or notified to the officer in charge of a police station and shall remain in effect until the proceedings concerned are concluded or the Director of Public Prosecutions withdraws it*".

There is no doubt that the contents of the two provisions cannot be said to have the same wordings but we find the context or import to be similar, geared at denial of bail for accused persons were the DPP certifies that the safety and interest of the Republic are at risk of being prejudiced and files the certificate in Court. While Section 36(2) encompasses both the issuance and effect of the certificate and leaving section 36(3) to address the duration while Section 148(4) of CPA addresses the issuance, effect and period of operation for the issued certificate, that is duration. But in effect and import the two provisions are speaking about the same issue, denial of bail upon certification that safety and interests of the Republic may be compromised.

The learned State Attorney argued that the principle of *pari materia* is applied for purposes of interpretation. Therefore there is no doubt that where two provisions are found to be *pari materia* then Courts should for consistency and harmonization should interpret the said provisions in the same manner. This has been held in various cases such as ***Tanganyika Tanganyika Garrage vs. Marcel G. Mafuruki*** [1975] LRT 23; ***Kimbute Otiniel vs Rep,*** Criminal Appeal No. 300 of 2011. It should also important to bear in mind that in ***Jeremiah Mtobesya's case*** (supra) the Court of Appeal at pg 53 of the Judgment last paragraph stated:

"... *Speaking of the Economic Crimes Act, the same contains a provision akin to section 148(4) of the CPA through which the DPP is similarly empowered to issue a certificate denying bail to an accused person upon*

grounds that the safety and interests of the United Republic are likely to be prejudiced by granting bail". Therefore there is no doubt that the provision referred to here is section 36(2) of the EOCCA.

Having regard to the above and the holding of the Court of Appeal in ***Jeremiah Mtobesya's case*** (supra), it is clear that what the Court found against section 148(4) of CPA may apply to section 36(2) but since consideration was only done to section 148(4) of CPA by considering and addressing all the content and context and outline procedure therein and not section 36(2) of EOCCA to lead to declaring section 148(4) of CPA unconstitutional, we are not at liberty to also translate that declaration to also spill over to section 36(2) of the EOCCA. What the Court of Appeal held in ***Jeremiah Mtobesya's*** case (supra), was not geared at interpretation of the contents of section 148(4) of the CPA, but to consider and determine the constitutionality of the said provision within the prescribed ambit.

It is our view that determination of unconstitutionality of a provision is made by a Court after serious consideration of a specific provisions and upon being moved to do so pursuant to relevant provision and presentation of constitutional provisions alleged to be infringed or abrogated. Unfortunately, though this was done for section 148(4) of CPA, there is no case which has specifically addressed the constitutionality of section 36(2) of the EOCCA and found it to be unconstitutional. In ***Gideon Wasonga***

and 3 Others vs. The Attorney General and Another, Misc. Civil Cause No. 214 of 2016 (unreported), HCT decision the Court found that section 36(2) of the EOCCA was constitutional. This decision has not been overturned by the Court of Appeal and it remains to have a persuasive value to this Court. In fact, in ***Emmanuel Simforian Massawe vs. Rep.***, Criminal Appeal No. 252 of 2016 (unreported), the Court of Appeal, having been made aware of the holding in ***Jeremiah Mtobesya's case*** (supra) and considered the invite to apply the principle of ***pari materia*** with regard to the two provisions under discussions and distinguished the case of Jeremiah Mtobesya stating it was a constitutional petition challenging the constitutionality of section 148(4) of CPA whereas what was before them was an appeal of criminal nature challenging the certificate of DPP filed under section 36(2) of EOCCA objecting to grant of bail and thus they failed to buy and apply the statutes in *pari materia* principle in the circumstances of the case.

We are also bound by this position held by the Court of appeal, having no stance to apply the principle of *pari materia* in the case before us, in view of the difference in nature of the decision of the Court, we thus refrain from applying the principle of statute *pari materia* in the matter before the Court though we understand and share some of the concerns raised by the Court of Appeal in ***Jeremiah Mtobesya's case***, but since there is a Court of Appeal decision which has specifically dealt with section 36(2) of EOCCA, it is prudent for us to be bound by the position stated therein..

That being the position, what is left for the Court we find, is to determine the validity of the certificate filed by the DPP. Having said this, it means all the other arguments related to the findings in ***Jeremiah Mtobesya's case*** (supra) which addressed issues of constitutionality fall, since they have to go through a similar channel for consideration and determination.

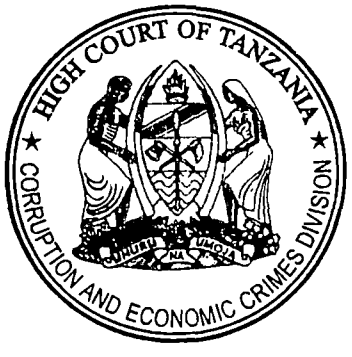
We thus move to address the three remaining conditions not addressed to test the validity of the certificate. The second test is that the Certificate must be to the effect that the safety or interests of the United Republic are likely to be prejudiced by granting bail in the case, as already shown the certificate highlights this although only refers to the interest and leaves the safety aspect. Since it is either or it is clear there is the a declaration as required and thus without doubt condition number 2 has been fulfilled. It should also be noted that the law does not prescribe for reasons or an explanation on what interests of the Republic will be prejudiced. In the case of ***Emmanuel Simforian Massawe*** the CAT states: "... *we are of the considered view that it is not the requirement of the law for the DPP to give reasons for objecting bail where he considers that the safety or interests of the Republic are likely to be prejudiced*". The positions is cemented by various cases including ***Method Malyango Busogo and Another vs R., Misc. Criminal Application No. 51 of 2015; Lucas Galuma Nyagabati vs. R, Criminal Application No. 107 of 2015; and the DPP vs Li Ling Ling***, Criminal Appeal No. 508 of 2015.

The third test is, that the certificate must relate to a criminal case either pending trial or pending appeal. This is an interesting aspect, since when you look at the certificate, it states, "... *who are accused persons in the above mentioned Economic Crime Case, should not be granted bail....*". We find this a bit difficult to palate, since we are not clear what above mentioned case is referred to. Since at the top of the Certificate, the only visible mentioned case is Misc. Economic Cause No. 12 of 2017. We feel that the certification should be clear, and the certification in effect starts from the word Certificate and what is written under the word Certificate, hence the name of the accused persons are mentioned but the pending case is mentioned nowhere. The certificate should be able to contain all the requisite information in itself for it to be seen as a valid certificate as propounded by case law. From what has been filed in Court we find that the certificate has failed to relate to a criminal case either pending trial or pending appeal and thus failed to fulfill condition number 3.

We move to the 4th conditions, whether the DPP acted in bad faith or abuse of the court process. We find this is subject to evidence which the applicants did not make available to this Court and therefore, we find no evidence that the DPP acted in bad faith or abuse of court process. There was oral submission on the fact that when filing the counter affidavit the respondents did not file this with the certificate and also the query why if there was a risk to prejudice interest of the Republic why not file the

certificate in 2016. While it is true, affidavital evidence reveals that the applicants were arrested in November 2016 and charges show they were filed on the same dates, there is no law prescribing when the DPP might file a certificate and that the certificate should be filed with a counter affidavit. Therefore we find that there is no evidence to show the certificate is in bad faith of abuse of the Court process.

All in all, as stated above we find that the Certificate filed by the DPP has not fulfilled all the conditions for validity as expounded by case law that is, having failed condition number 3. It should be borne in mind in addressing the competence of the Certificate, it is only the certificate which is considered. We thus proceed by refraining to take into consideration the Certificate filed by the Director of Public Prosecution objecting to bail for reasons stated herein, and order that hearing of the application proceed accordingly. Ordered.



Winfrida B. Korosso

JUDGE

21st May 2018