

**IN THE HIGH COURT OF TANZANIA**  
**THE CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**DAR ES SALAAM DISTRICT REGISTRY**

**MISC. ECONOMIC CAUSE NO. 19 OF 2018**  
(Originating from Economic Crime Case No. 48 of 2016 of Resident  
Magistrate Court of Dar es Salaam at Kisutu)

**MAHADH MOHAMED @NAHODA MT. 2106 ..... APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

Date of Last Order: - 01/06/2018  
Date of Ruling: - 22/06/2018

**R U L I N G**

**W.B. KOROSSO, J**

The Ruling relates to the validity and competence of the Certificate filed by the Director of Public Prosecutions objecting to grant of bail to the applicant, upon an application filed by Mahadh Mohamed @Nahoda MT 2106, pursuant to section 29(4)(d) and 36(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 (EOCCA). The application was filed by way of chamber summons supported by an affidavit affirmed by the applicant, and sought for bail to be granted to the applicant.

The supporting affidavit avers that the applicant faces charges at the Resident Magistrate Court of Dar es Salaam at Kisutu in Economic Crime Case No. 48 of 2016, for Unlawful Possession of Government Trophy contrary to section 86(1) (2) (c)(ii) and (3) of the Wildlife Conservation Act, No. 5 of

2009 read together with Paragraph 14 of the First Schedule to and section 57(1) and 60(2) of the EOCCA. From the charge sheet annexed to the applicants affidavit, it reveals that the applicant is charged with another person and the allegations being to be found in possession of government trophies, to wit, six pieces of elephant tusks valued at Tshs. 65,000,000.0, the property of the Government of United Republic of Tanzania.

The respondents, on being served the application filed a counter affidavit sworn by Narindwa Sekimanga, learned State Attorney countering some of the averments in the applicant's affidavit. The respondents also filed a certificate by the Director of Public Prosecutions objecting to grant of bail to the applicant for reason that grant of bail will prejudice the interests of the Republic.

The applicant who was unrepresented objected to the filed certificate alleging it was filed with ill intention. The Court upon prayers from the applicants authorised parties to file written submissions in respect to the objection by the applicant on the competence of the certificate filed. Both parties complied with the schedule ordered by the Court to file their submissions, except for the rejoinder by the applicant, who did not file it on time and up to the time of delivering the Ruling there were no reason given on the delay to file a rejoinder nor any prayer for extension of time. Therefore the Court will proceed in determining the matter finding that the applicant waived his right to file a rejoinder to the written submission from the respondents.

On the part of applicant, he contended that the offence charged is bailable and bail is a fundamental right for him as an accused person. The applicant contended that the certificate filed by the DPP objecting granting of bail to him, has not complied to the principles of natural justice because it failed to reveal the nature of the safety or interest of the Republic that will be prejudiced by the applicant where the Court to grant bail. That is the right of the applicant to know this if the principle of natural justice were adhered to. The second reason for objecting the certificate was that, it being filed under section 36(2) of EOCCA contravenes the principle of presumption of innocence enshrined under Article 13(6)(b) of the Constitution of the United Republic of Tanzania 1977. Therefore it was the applicant's prayer that for the reasons advanced, the Court need not consider the certificate and proceed to grant bail to him as prayed.

When given an opportunity in Court to expound on the filed written submission, the applicant also added another reason for objecting to consideration of the DPP's certificate, submitting that the assertion that grant of bail to the applicant will compromise the safety and interest of the Republic has no stance having regard to the fact that charges against him were filed on the 25/10/2016 and the certificate was filed on the 9/5/2018, that this long period delineates the argument and fears that if granted bail it will prejudice interest of the Republic since if that was the case then the certificate should have been filed a long time ago when he was charged. Also that the charges against him are not true.

On the part of the Respondent Republic, they submitted that filing of the certificate issued by the DPP objecting to grant of bail to the applicants is

guided by the law, that is, section 36(2) of EOCCA. That once the certificate is filed, the Court should take it into consideration the certificate contents and the applicant should not be granted bail until the DPP withdraws the certificate or upon circumstances provided under section 36(3) of EOCCA. That the DPP derives his powers from the Constitution of URT, under Article 59B (2), and when exercising his powers, the DPP is guided by three principles; the need to dispense justice; prevention of misuse of procedures for dispensing justice and shall also consider public interest and as prescribed by any law enacted by Parliament.

Reading through the DPP's certificate, the underlying point made by the respondents in their submissions, being that, once the DPP files a certificate objecting to bail, what is before the Court for consideration as expounded by the case ***of DPP vs Ally Nur Dirie*** (1988)TLR 252 that the issue before the Court should be validity of the certificate. That this principle was cemented by the Court of Appeal in ***DPP vs. Li Ling Ling***, Criminal Appeal No 508 of 2015 (unreported). The cases also expounded on the conditions precedent to test the validity of the DPP's certificate. First that the DPP must certify 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 a Criminal case either pending trial or pending appeal.

That there is nowhere in the relevant law or any law that requires the DPP to give reasons for objecting bail, a position stated in ***Emmanuel Simforina Massawe vs. Republic***, Criminal Appeal No. 252 of 2016. The respondents also submitted that once the certificate is found to be valid, the

Court shall not grant bail. It was thus there prayer that the Court be guided by the principles expounded by the cited case with regard to the competence and validity and the consequences thereto of the certificate upon being found to meet the validity test expounded by case law and therefore find the certificate to be valid and refrain from granting of bail to the applicant.

We have considered all the submissions before the Court, we are guided by the position of the law and principles drawn out from case law. There is no doubt, that section 36(2) of EOCCA empowers the DPP to issue a certificate objecting to bail where he believes a person charged with an economic offence could prejudice the safety and interests of the Republic. Section 36(3) of EOCCA prescribes the duration of the issued certificate that it will operate until it is withdrawn. In the case before the Court, a certificate objecting to grant of bail has been issued by the DPP vide section 36(2) of EOCCA. Therefore, the DPP certificate as propounded by case law does not challenge or abrogate the constitutional principle of innocence until proven guilty. In any case if the applicants feel aggrieved and that, the provision mandating the DPP to issue a certificate objecting to bail is unconstitutional, this Court is not a proper channel to advance this, the applicant may proceed through the available channels to advance this claim, the same where the applicant feels that the DPP has failed to exercise his mandate properly, there is the process of judicial review available for him.

According to decisions of the Court of Appeal in ***DPP vs Ally Nur Dirie*** case (supra), ***DPP vs Li Ling Ling*** (supra) and ***Emmanuel S. Massawe vs. R.*** (supra), the role of this Court is to satisfy itself on the validity of the said certificate upon conditions set by case law. That is;

- 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 in bad faith or abuse of Court process (added by Emmanuel Simforian Massawe case (supra)).*

With the said set conditions, looking at the certificate before the Court, there is no question that condition (i) and (ii) are satisfied, the certificate is in writing and it addresses the fact that the safety and interests of the United Republic are likely to be prejudice by granting bail. For number (iv), there was no evidence brought before the Court to show that the DPP acted in bad faith or abuse Court process. The applicant's contention on the lapse of time which passed from the filing of the charges to filing of certificate we find cannot hold, since such certificate is used when there is an application for bail and it is for the purpose of denying bail to the applicant. Therefore filing the certificate when there is an application is what was done in this case, and the Court takes judicial notice that there was a certificate filed by the DPP objecting to bail the first time the applicant applied for bail in Misc. Economic Cause No. 26 of 2017 and then the certificate was filed on 23rd of August 2017 (an application which was withdrawn) and thus, it is not strictly true that there was a very long lapse from the date of being charged to when the certificate was filed, and there being no evidence of bad faith

or abuse of Court process, we find, delimits any contention of bad intention or bad faith. Therefore the certificate passes this test.

We find we need not spend too much time on condition (iii), since looking at a certificate we find the certificate makes reference that the accused persons including the applicant are accused in an economic crime case, though we might not be satisfied with how this reference is made in the certificate since we expect a certificate to be clear and sufficient in itself in its contents, suffice to say, considering the circumstances of this case where the applicant has conceded in his written submissions on there being a pending case where he is charged we will not dwell further on whether the reference made to a pending case in the certificate is sufficient or not, since with the applicants concession on a pending economic case we find, the certificate has alluded to there being a pending economic case against the applicant for which the applicant has also not denied. This being a third condition to fulfil when considering the validity of the certificate, for the stated reasons, we find that the validity test has been fulfilled.

In the premises, this Court having found that the certificate is valid, as per case law, cannot proceed to grant bail now until when the certificate is withdrawn as provided under section 36(3) of EOCCA. It so ordered.



  
Winfrida B. Korosso  
**JUDGE**  
22nd June 2018