

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

MISC. ECONOMIC CAUSE NO. 55 OF 2018

(Originating from Economic Case No. 58 of 2018 at the Resident
Magistrate's Court of Dar es Salaam at Kisutu)

WILLIAM ERNEST NTURO APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

Date of Last Order: - 30/10/2018

Date of Ruling: - 13/11/2018

R U L I N G

L.L. MASHAKA, J.

This ruling is in respect of the application for bail by way of chamber summons under section 29(4) (d) and 36(1) of the Economic and Organised Crime Control Act (EOCCA), Cap 200 R.E 2002 as amended by Act No. 3 of 2016. The applicant prays for this court to be pleased to admit him to bail and any other order this court may deem fit to grant. The chamber summons is supported by an affidavit sworn by the applicant himself.

Initially the applicant together with other 12 co-accused persons in Economic Case No. 58 of 2018 were arraigned before the Resident Magistrate's Court of Dar es Salaam at Kisutu with five counts of conspiracy to commit an offence, publication of false information in a computer system, transmission of unsolicited electronic messages and money laundering. From affidavital evidence at paragraphs 4 to 12 of the affidavit, the applicant could not be admitted to bail due to the 5th count of money laundering, which is unbailable offence. The applicant averred further that the charge sheet is defective since the particulars of the 5th count on money laundering in the particulars of offence reveals that the accused persons transacted Tshs. 154,032,830/= being proceeds of a predicate offence namely obtaining money by false pretence, while the offence of obtaining money by false pretence is not among the offences designated as predicate offence under the Anti- Money Laundering Act.

In reply, the Respondent filed counter affidavit sworn by Elizabeth Mkunde Temu, Learned State Attorney for the Respondent Republic. At paragraph 4 of counter affidavit the deponent stated that the applicant is charged with the offence which is unbailable. Regarding the objection raised by the applicant challenging the charge sheet, at paragraph 6 it averred that it does not relate in any way with the bail application, hence this was not a proper forum.

During hearing of this application, the applicant was present in person and unrepresented, while the Republic Respondent was represented by Ms. Narindwa Sekimanga, Learned State Attorney assisted by Mr. Candid Nasua Learned State Attorney.

Arguing in support of application, the applicant prayed for the affidavit to form integral part of his submission and contended that, in the counter affidavit the respondent raised objection to his bail application at paragraph 6 of counter affidavit. That the respondent misconceived paragraphs 5 up to 14 of supporting affidavit of the applicant, which explained and challenged the charge sheet that it does not relate to this application. According to the applicant, the referred paragraphs in his affidavit explain how the charge sheet is defective but this should not deter the court from granting bail to the applicant. Hence, he prayed for the court to grant bail since he has reliable sureties.

The applicant submitted that the Resident Magistrate's Court at Kisumu had no jurisdiction to hear his application and he was not asked to plead hence this court has jurisdiction to determine all issues raised in his affidavit.

In response, Learned State Attorney for the respondent prayed the counter affidavit to be adopted to form part of their submission. It was her contention that the offence facing the applicant of money laundering is not bailable under section 148(5)(a)(v) of the Criminal Procedure Act (hereinafter referred as CPA), Cap 20 R.E 2002 as amended by Written Laws (Misc. Amendments) Act No. 15 of 2007. Learned State Attorney referred the case of **Gedion Wasonga and 3 Others Vs Attorney General and 2 Others**, Misc. Civil Cause No. 14 of 2016, HC at Dar es Salaam (unreported), a constitutional cause where the Court held that section 148(5)(a)(v) of the CPA was constitutional.

Regarding the issue of defective charge sheet, Learned State Attorney argued that this is not the proper forum hence the applicant should seek redress from the proper forum. Therefore, it was their prayer that the applicant should not be admitted to bail.

Having considered the submissions by the applicant and Learned State Attorney and their respective affidavit and counter affidavit, there are two issues for determination. **Firstly**, whether the offence of money laundering the applicant stands charged is a bailable offence and **secondly** whether under the circumstance of this bail application and at this juncture the court has jurisdiction to assess the defectiveness of the charge sheet.

Commencing with the first issue, it is undisputed and well contended by Learned State Attorney in their submission and averred at paragraph 4 of both the affidavit and counter affidavit the applicant stands charged with a count of money laundering, which is unbailable offence. This is stipulated in section 19 of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2007 which amended section 148(5) of the CPA by inserting paragraph (iv) regarding money laundering contrary to the Anti – Money Laundering Act 2006, which prohibits grant of bail to accused persons charged with money laundering.

Regarding the second issue on whether this court has jurisdiction to assess the defects of the charge sheet, having considered that the Economic Case No. 58 of 2018 is still at a preliminary stage, where the matter is yet to be committed for trial before this court, it is premature for this court to step in at this time and therefore not the proper forum for this court to consider

the defects of the charge sheet see section 234 of CPA, Cap 20, R.E 2002. Furthermore, the bail application before the court is conferred with jurisdiction to entertain only bail application as stipulated under section 29(4)(d) of the EOCCA, Cap 200 R.E. 2002.

Consequently, the application for bail is hereby dismissed and the applicant to remain in custody.

So, ordered.




L.L. MASHAKA
JUDGE
13/11/2018