

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

MISC. ECONOMIC CAUSE NO. 23 OF 2018

(Originating from Economic Crime Case No. 5 of 2018 of Resident
Magistrate Court of Coast Region at Kibaha)

1. BURUHANI HAJI @HAMIS 2. JUMA MCHA 3. ALLY MOHAMED SALUM 4. SALUM FAKHI ZUBERI 5. MAHAZI KOMBO 6. OMARY NASORO AHMAD	} APPLICANTS
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VERSUS

THE REPUBLIC RESPONDENT

Date of Last Order: - 19/06/2018

Date of Ruling: - 25/06/2018

R U L I N G

W.B. KOROSSO, J

This Ruling relates to a preliminary objection raised by the Respondent Republic, challenging the application before this Court filed by all the six

applicants shown above through chamber summons supported by a joint affidavit affirmed by all the applicants pursuant to section 29(4)(d) and 36(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 (EOCCA) seeking the Court to admit them bail pending trial for Economic Crimes which they stand charged.

Respondents filed a counter affidavit in response to the application upon being served and a notice of preliminary objection. The notice of preliminary objection was on the ground that the application is incompetent by reason that the chamber summons and applicants affidavit are defective for incorrect citation of the case number pending at the Resident Magistrate Court of Coast Regions at Kibaha for which the applicants stand charged with an economic offence and the bail application relates.

At the hearing of the preliminary objection, the learned State Attorney representing the Republic when amplifying the preliminary objection cited the sought orders in the chamber summons where it is stated:

"That this Honourable Court may be pleased to admit the Applicants to bail pending their trial for Economic Crime Case No. 3 of 2018"

and paragraph 2 of the affidavit supporting the application where it is states;

"That the above mentioned applicants are Tanzanian Citizen and we have been charged in Economic Crime Case No. 3 of 2018..."

The respondents argued that the applicants reference to Economic Crime Case No. 3 of 2018 is improper, since the case concerning the pending charges for which they seek bail is *Economic Case No. 5 of 2018* and not *Economic Case No. 3 of 2018* and this is clear from what is referred at the title in both the chamber application and Annexure "A" of the affidavit, showing the originating case number. The respondents contended that this error in citation of the pending case in the chamber summons and the affidavit is a fundamental error going to the root of the application and therefore renders the application defective and it should be struck out.

The respondents submitted that, their objection is based on the fact that when you consider the provisions cited to move this Court to hear and determine the application especially section 29(4) (d) of EOCCA, it directs the Court with jurisdiction to hear and determine the application where charges are above ten million shillings, and before commencement of trial. That this means that an application for bail is grounded on their being a pending case and the application for bail before this Court should be before start of a trial. Consequently, what is required is for the pending case to be properly cited since once it is not cited properly as the case in the application as presented, it means there is no pending case since the case number cited at RM's Court Coast Region at Kibaha if there, does not involve the applicants before the Court.

On the part of the Applicants, through their counsel, he conceded to the improper citation in both the chamber summons and the affidavit

supporting the application has submitted by the respondent's counsel, contending that the pending case for which the applicants face charges at RMs Court of Coast Region at Kibaha, should have read Economic crime Case No. 5 of 208 and not Economic crime case No. 3 of 2018 as it appears. But stated that it was a typing error and the Court should consider the defect as minor especially since there is a charge sheet annexed to the affidavit, which shows the pending case is Economic Crime Case No. 5 of 2018 and not No. 3 of 2018 and that an error in one paragraph of the affidavit should not lead to striking out the whole application since the remaining paragraphs an stand on their own for the Court to hear and determine the bail application.

The applicants counsel sought the Court to rely on the case ***of Convergence Wireless Networks (Mauritius) Limited and 3 others vs. WIA Group Ltd and 2 others***, Civil Application No. 263 "B" of 2015, CAT Dar es Salaam (unreported), which referred to the CAT decision in Phantom Modern Transport (1985) Limited vs. DT Dobie (Tanzania) Limited, in effect stating that it is not necessary to strike out the whole application just for having some offensive paragraphs. It was therefore the applicants' prayer that where the Court to find the highlighted paragraphs offensive for wrong citation or quotation of the pending case, then the relevant paragraphs should be expunged and continue to hear and determine the application with the remaining paragraphs.

In a brief rejoinder, the learned State Attorney for the respondents, reiterated what they had submitted in chief on the preliminary objection,

and submitted that the cases cited by the applicants and especially the holdings thereto have been paraphrased when quoted, and when you read the relevant holdings in totality, you find the cases are distinguishable since the paragraphs which the applicants have prayed the Court to expunge if they find defective are substantive and therefore material to the application before the Court. That the Court should also find thus and strike out the application for being defective.

This is a matter which should not take much of our time. In effect from their submissions, the applicants conceded to the preliminary objection, but where the applicants and the respondents departed is the consequences or the import of the defects highlighted, that is, wrongly citing the case number in the chamber summons and the affidavit. It is true that the charge sheet showing the case that is pending was part of the applicants' affidavit being annexure "A" and pronounced in paragraph 2 of the affidavit.

There is also the fact that paragraph 2 of the affidavit states as follows:

"That the above mentioned applicants are Tanzanian Citizen and we have been charged in Economic Case No. 3 of 2018 and when the case came for mention they were not allowed to ask for bail because the property value caught wit is Tshs. 30,000.000/=..."

The importance of applicants showing that the application brought before a court for bail application has a pending case, which is pending appeal or trial cannot be overstated as expounded in Section 29(4)(d) of

EOCCA. In **DPP vs. Li ling Ling**, Criminal Appeal No. 508 of 2015, CAT Dar es Salaam, this point was emphasized. The Court stated:

"Section 29 (4) (d) of the Act provides as follows:- "In all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the court is hereby vested in the High Court. Under this provision, the High Court has jurisdiction to hear and determine an application for bail at any stage of the proceedings before the accused person's trial has commenced. This means the period between the arrest and after committal of an accused person. According to the provision therefore, it is only after commencement of trial that the High Court ceases to have jurisdiction".

From this, it is clear that the application ensues before this Court, where a trial has not commenced and envisages there being a pending case for committal or trial. This being the position, the issue for consideration we find is whether the application before the Court establishes that there is a pending case pending trial involving the accused persons.

The applicants counsel has invited this Court to expunge the paragraphs that have wrongly cited the number of the pending case at RM's Court Kibaha against the applicants relying on the cited case of **Convergence and Wireless Network (supra)**. From the outset it is clear that the said case is distinguishable, in that it addressed issue of

offensive paragraphs of an affidavit for reasons they were alleged to contain extraneous matters in the form of arguments, conclusions, opinion and pure principles of law, while that is not the argument in this case.

The issue before us is the weight to be given in view of the incorrect citation of the pending case number in the chamber summons and the affidavit and whether this renders them defective and the application incompetent. It is interesting that while praying for the Court to expunge the said paragraphs, the applicants counsel did not consider the fact that the annexed charge sheet which he sought the Court to find adequate to show there is a pending case, is referred under paragraph 2 of the affidavit, and if we expunge the said paragraph it will mean the charge sheet will not be part of the affidavit before the court. It is also true that in the title of the Chamber summons it states:

MISCELLAENOUS ECONOMIC CAUSE NO. 23 OF 2018

*(Original Court of Resident Magistrate Court of Coast Region at Kibaha
Economic Crime Case No. 5 of 2018)*

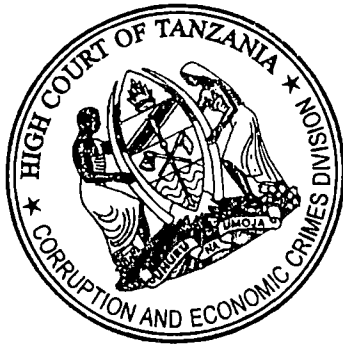
For the joint affidavit there is a similar title as shown above and seen in the chamber summons. There is no doubt that the contents of chamber summons or affidavit are expected to be sufficient in themselves. Having perused through the documents before the Court and considered the matter carefully, we find that, the defect in the chamber summons and the affidavit, bearing in mind there being the annexed Charge sheet referred to

under paragraph 2 which shows the number of the pending case and the fact that the title to the chamber summons and the affidavit as shown above also recited the proper number of the pending case, we find is enough to show that there is a pending case against the applicants and that it links with the current application and therefore fulfils the condition precedent in section 29(4)(d).

Under the circumstances, we are also guided by the Court of Appeal decision in ***Leila Jalaludin Haji Jamal v. Shaffin Jalaludin Haji Juma***, Civil Appeal No. 55 of 2003 that, the error of citing year 2002 instead of 2001 in a case from a subordinate court is a minor curable defect and especially since no injustice was occasioned. We find this decision relevant in view of what has been explained above, that the error in incorrectly citing the case number is not substantive especially where there are other matters which show the existence of the pending case as shown hereinabove. It is pertinent to understand that each case is determined bearing in mind the specific circumstances of the case.

We refrain from the invitation from the applicants counsel to expunge the whole paragraph since we find the incorrect citation a minor and curable error under the circumstances, since the important factor is to show there is a pending case and from the charge sheet, linking it to what is shown in the titles of the chamber summons and the affidavit, there is no way one can argue that the respondents have been prejudiced.

We thus find the error minor and curable and therefore the application competent. Let the matter proceed on merit.



A handwritten signature in black ink, appearing to read "Winfrida B. Korosso".

Winfrida B. Korosso

JUDGE

25th June 2018