

**IN THE HIGH COURT OF TANZANIA**  
**ECONOMIC AND ECONOMIC CRIMES DIVISION**

**AT DAR ES SALAAM**

**ECONOMIC APPLICATION NO. 4 OF 2019**

**DIRECTOR OF PUBLIC PROSECUTIONS.....APPLICANT**  
**VERSUS**

**MANON ELISABETH HUEBENTHAL.....1<sup>ST</sup> RESPONDENT**  
**FRANK ROBERT RICKETTS.....2<sup>ND</sup> RESPONDENT**  
**IMS MARKETING TANZANIA LTD.....3<sup>RD</sup> RESPONDENT**

**RULING**

This application was preferred by the applicant above mentioned against the respondents mentioned above for a forfeiture order of the following tainted properties: cash money in bank account number 01528310001 held at Bank of Africa (BOA Bank Ltd) in the name of IMS Marketing Tanzania Ltd amounting to United States Dollars (USD) 1,337,965.90; cash money in bank account number 01528310026 held at BOA Bank Ltd in the name of IMS Marketing Tanzania Ltd amounting to USD 13,631.89; cash money in bank account number 01528310014 held at BOA Bank Ltd in the name of IMS Marketing Tanzania Ltd

amounting to Euro 5,377,306.56 and any other order the Court may deem fit and just to grant.

In the affidavit in support of the application sworn by Estazia Odhiambo Wilson and SSP Fadhili Said Mdemu, it was stated that on 19<sup>th</sup> November 2014 the first and second respondents registered and incorporated the company called IMS Marketing Tanzania Limited (the third respondent herein) with certificate of incorporation number 113133. The first and second respondents were shareholders and directors of the company, with the main objective to deal with marketing and neither crypto currency nor collection of funds from members of the public. On 12<sup>th</sup> December 2014 the respondents applied and obtained business licence No. B 20122041 issued by Kinondoni Municipal Council, licencing the third respondent to operate marketing services business in Kinondoni Municipal. On 23<sup>rd</sup> April 2015 the first and second respondents opened a US dollar bank account No. 01528310001 in the name of the third respondent at Bank of Africa NDC Branch. On 3<sup>rd</sup> May 2016 the 1<sup>st</sup> and 2<sup>nd</sup> respondents opened a Euro bank account No. 01528310014 in the name of the 3<sup>rd</sup> respondent at Bank of Africa NDC Branch Dar es Salaam. On 26<sup>th</sup> July 2016 the 1<sup>st</sup> and 2<sup>nd</sup>

respondents opened US dollar bank account No. 01528310026 in the name of the 3<sup>rd</sup> respondent at Bank of Africa Dar es Salaam. That the 3<sup>rd</sup> respondent instead of dealing with marketing services as stipulated in the business licence, started collecting money from different persons within and outside the United Republic of Tanzania. That it was discovered that the 3<sup>rd</sup> respondent has a close link and are part to the operation of the company called Onecoin Ltd founded in April 2014 in Gibraltar with offices in Bulgaria, the United Arabs Emirates (UAE) and Hong Kong. That Onecoin Ltd markets a digital crypto-currency called onecoin which consist of eight different packages priced between 110 Euro and 27,500 Euro. That individuals were encouraged to purchase tokens that were used to mine Onecoin that later on were transferred by Onecoin Ltd into Euros through a private exchange operated by Onecoin Ltd. That Onecoin Ltd operates a multi-level marketing structure through which individuals are compensated for recruiting new members who purchase trade packages and that the said members receive a commission between 10% and 25% of the value of trade packages purchased by individuals recruited by Onecoin Ltd. That the 3<sup>rd</sup> respondent and Onecoin Ltd are operating a pyramid scheme that is a

predicate offence of money laundering. That the operation of Onecoin Ltd and its subsidiary companies in various jurisdiction has been stopped and their bank frozen for its complicity in money laundering offences arising from ponzi scheme that is the same to pyramid scheme. After the said stoppage, Onecoin Ltd advertised on her facebook and online website that members of public can pay their Onecoin trade packages and deposit through bank account No. 01528310001 for USD and 01528310014 for Euro both operated and maintained at Bank of Africa NDC Dar es Salaam. That in between 23<sup>rd</sup> April 2015 and 8<sup>th</sup> December 2016 the current bank account No. 01528310001 received USD 1,337,965.90 from members of public within and outside Tanzania, whereby between 18<sup>th</sup> November 2015 and 31<sup>st</sup> June 2016 a total of USD 61,643.83 were transferred to account No. 048-903954-0 held in the name of International Marketing Services of Singapore and between 31<sup>st</sup> June 2016 and 17<sup>th</sup> November 2016 a total USD 29,549.07 were transferred to account No. 6750050311 maintained in the name of 2<sup>nd</sup> respondent in Singapore. That the amount of money available in current bank account No. 01528310001 is USD 1,230,741.90. That on divert dates between 10<sup>th</sup> August 2016 and 17<sup>th</sup> November 2016 current bank account No.

01528310026 received USD 13,631.97 being contribution from members of the public within and outside Tanzania also received USD 6,585.84 from bank account No. 0152831000. That in between 10<sup>th</sup> August 2016 and 17<sup>th</sup> November 2016 current bank account No. 01528310014 received Euro 5,442,020.05 from members of the public within and outside Tanzania. That the balance in bank account No. 01528310014, 01528310026 and 01528310001 is Euro 5,277,217.27, USD 11,284.74 and USD 1,230,741.90 respectively. That the above mentioned monies are proceeds of pyramid scheme. That having revealed that the said monies are proceeds of crime, the Director of Public Prosecution (DPP) made a restraint application in the Resident Magistrates' Court of Dar es Salaam at Kisutu (hereafter to be referred as at Kisutu), where on 16<sup>th</sup> January 2018 the said bank accounts were frozen. On 11<sup>th</sup> February 2019 Economic Case No. 9/2019 was instituted at Kisutu against the respondents for offences of conspiracy, maintaining and conducting pyramid scheme and money laundering. That efforts to arrest and arraign the respondents in court failed as their where about is unknown and their registered office of the 3<sup>rd</sup> respondent is closed. That on 6<sup>th</sup> March 2019 the court at Kisutu issued arrest warrants of the 1<sup>st</sup>

and 2<sup>nd</sup> respondents to secure their attendance to answer their charges and the same was published in the Daily News on 15<sup>th</sup> March 2019. That notwithstanding the publications of arrest warrant, after expiration of six months the respondents have not shown up even. That monies deposited and held in the accounts above mentioned are connected to offences of conspiracy, maintaining and conducting pyramid scheme and money laundering committed by the respondents hence are proceeds of crime. That the monies mentioned above are tainted properties subject to the forfeiture to the Government.

Mr Biswalo Mganga Director of Public Prosecution, Mr Shadrack Kimaro Assistant Director Asset Recovery and Mr Christopher Msigwa Senior State Attorney appeared for the republic to argue the application.

This application was made under the enabling provision of sections 4(1)(c), 9(1)(a) and 14(1) of the Proceeds of Crime Act (Cap 256 R.E. 2002) and was endorsed ex-parte application for forfeiture order. As much none of the cited provisions cater for ex parte application/order of this nature, the Court ordered the respondents to be served by way of substituted service or publication in the Daily News. The

publication was effected quadruple in the Daily News between January and March 2020. However, the respondents neither showed up nor filed counter affidavit.

The corner stone of this application as alluded by Mr Msigwa learned Senior State Attorney is hinged on an argument that the forfeiture orders are sought on the basis that the first and second respondents were convicted in terms of section 4(1)(c) Cap 256 (supra). The said proviso with its marginal note read 'meaning of "conviction", etc., of offence' provides, I quote,

*"(1) For the purposes of this Act a person shall be taken to be convicted of an offence if–  
(a) ...inapplicable....;  
(b) ...inapplicable..; or  
(c) the person absconds in connection with the offence"*

Section 5(a),(b),(c)(ii)(aa) of Cap 256 (supra) define the meaning of absconding as follows, I quote,

*"For the purposes of this Act, except section 4, a person shall be taken to abscond in connection with an offence if and only if–  
(a) an information is laid alleging the*

- commission of the offence by the person;*
- (b) a warrant for the arrest of the person is*  
*issued in relation to that information; and*
- (c) one of the following occurs, namely–*
- (i) ....inapplicable...;*
- (ii) at the end of a period of six months from*  
*the date of issue of the warrant–*
- (aa) the person cannot be found; or*  
*(bb) ...inapplicable...."*

Herein it was put on evidence by way of affidavit that, the first and second respondents who are shareholders, directors and signatories of the third respondents were investigated; accounts of the third respondent frozen; charged at Kisumu for offences of conspiracy, maintaining and conducting pyramid scheme and money laundering; warrant of arrest issued against them by way of publication in the Daily News; and at the end of six months after publication of warrant of arrest did not show up. In view of that, I node with the learned Senior State Attorney that the conditions for one to be taken to have been convicted of an offence as stipulated under sections 4(1)(c) and 5(a),(b),(c)(ii)(aa) of Cap 256 (supra) have been met. It is therefore taken that the first and second accused are deemed to have been convicted for



committing conspiracy, maintaining and conducting pyramid scheme and money laundering.

An issue as to how, when and where the said offences were committed have been exhausted in the two un opposed affidavits. It suffices for the moment to say the mentioned offences were committed by first and second respondents. It was deposed in the affidavit that the monies collected by the respondents are proceeds of pyramid scheme and therefore tainted properties.

The learned State Attorney submitted at length regarding as to why the accounts subject for forfeiture order are tainted property. However, the same argument were a replica of the facts deposed in two affidavits recapitulated above.

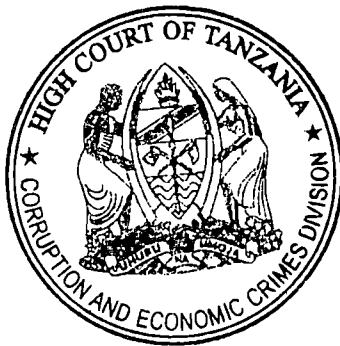
The Director of Public Prosecution alluded that an affidavit is an evidence and in absence of a counter affidavit, the averments are taken to be true and not objected. This is a correct position of the law. As much the affidavit of Estazia Odhiambo Wislon and SSP Fadhil Said Mdemu were not opposed, therefore the facts deposed therein are taken to have been admitted by the respondents. Indeed even after publication, no one resurfaced or appeared to contest and

oppose as an interested party to the property published to be subject for forfeiture order.

Therefore, all prayers in the application are taken as unopposed and are wholly granted.

However, I have refrained to make an order for payment of interest against the Bank where the cash money is kept (frozen) on the following reasons. For one thing, while it is admitted that in the application, the applicant had asked also for any other order which could accommodate a prayer made by the DPP, but the said interest was not among the assertion in the affidavits, nor stated in the affidavits that the bank is engaged in the so called investment overnight in respect of the frozen money. For another, the Bank was not made a party to these proceedings. More important, the Bank was not summoned to appear to defend, therefore making an order against it will be tantamount as condemning her unheard. Thirdly, the rate of interest to be charged was not stated and it is not clearly articulated as to what an exact amount the Bank did benefit out of that money. To my view, the issue of interest against the Bank should be pursued on another proper forum.

All prayers pleaded in the application are granted. To be precise: cash money in bank account number 01528310001 held at Bank of Africa (BOA Bank Ltd) in the name of IMS Marketing Tanzania Ltd amounting to United States Dollars (USD) 1,337,965.90 is forfeited to the Government of the United Republic of Tanzania; cash money in bank account number 01528310026 held at BOA Bank Ltd in the name of IMS Marketing Tanzania Ltd amounting to USD 13,631.89 is forfeited to the Government of the United Republic of Tanzania; cash money in bank account number 01528310014 held at BOA Bank Ltd in the name of IMS Marketing Tanzania Ltd amounting to Euro 5,377,306.56 is forfeited to the Government of the United Republic of Tanzania.



**E.B. Luvanda**  
**Judge**  
**27.3.2020**