

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**AT MWANZA SUB-REGISTRY**

**ECONOMIC APPLICATION NO. 01 OF 2022**

*(Originating from Economic Case No. 2 of 2017 in the Resident Magistrate's  
Court of Mwanza at Mwanza)*

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

**VERSUS**

- 1. MNAWALA S/O HAMISI @ NYANDA..... 1<sup>ST</sup> RESPONDENT**
- 2. MUSTAFA S/O HAMIS NYANDA @ TAFU..... 2<sup>ND</sup> RESPONDENT**
- 3. MSWADIKI S/O MIKIDADI MTABURU..... 3<sup>RD</sup> RESPONDENT**
- 4. HAMISI S/O KITIGANI @ ABUU YASIRI..... 4<sup>TH</sup> RESPONDENT**
- 5. MWANTUMU D/O RAJABU..... 5<sup>TH</sup> RESPONDENT**
- 6. MUSA S/O MURUA SHAMBANI @ MTENDAJI..... 6<sup>TH</sup> RESPONDENT**
- 7. ASIA D/O MUSTAFA JUMA..... 7<sup>TH</sup> RESPONDENT**
- 8. ABDALLAR S/O MWINYIHAJI RASHIDI..... 8<sup>TH</sup> RESPONDENT**
- 9. ZULUFA D/O IBRAHIM ABDUTWALIBU..... 9<sup>TH</sup> RESPONDENT**
- 10. MAYASA D/O RASHIDI TWAHA..... 10<sup>TH</sup> RESPONDENT**

**RULING**

11<sup>th</sup> and 14<sup>th</sup> July, 2022

**BANZI, J.:**

This ruling emanates from an *ex-parte* application filed by the Director of Public Prosecutions ("the DPP") in accordance with section 34 (3) of the Prevention of Terrorism Act, No. 21 of 2002 as amended by Act No. 7 of 2018 and sections 188 (1) (a), (b), (c) and (d), (2) and 392A (1) of the

Criminal Procedure Act [Cap. 20 R.E. 2019] ("the CPA"). Through the chamber summons, the Applicant is seeking for the following orders:

- (i) non-disclosure of identity and whereabouts of the witnesses for security reasons during committal proceedings;
- (ii) non-disclosure of witnesses' statements during committal and trial proceedings;
- (iii) witnesses' testimony to be given through video conference;
- (iv) trial proceedings to be conducted in camera; and
- (v) any other protection measure as the Court may consider appropriate for security of the prosecution witnesses.

The application is supported by two affidavits deposed by Mr. Robert Kidando, learned Senior State Attorney and Assistant Commissioner of Police Faustine Mafwele, the Regional Crimes Officer of Mwanza Region.

It is indicated in the affidavits and annexure that, the Respondents are jointly and severally charged with offences of conspiracy to commit an offence, use of property for commission of terrorist act, provision of fund to commit terrorist act, recruitment of persons to participate in terrorist act, harbouring of person to commit terrorist act, participating in meeting to commit terrorist act, unlawful possession of firearm and unlawful possession of ammunition. These offences are alleged to be committed on diverse dates

between 5<sup>th</sup> January and 2<sup>nd</sup> December, 2016 at various places, within Nyamagana District in Mwanza Region.

The hearing was conducted by way of video link whereby, Ms. Magreth Mwaseba, learned Senior State Attorney appeared on behalf of the Applicant. First and foremost, she prayed to adopt the contents of two affidavits as part of her submission. She went on and explained nature of offences against the Respondents, which to her view are serious offences requiring protection of their witnesses. She further submitted that, according to the affidavits, the Respondents aimed at destabilizing the fundamental political, constitutional, economic and social structure in order to establish Islamic state within the United Republic of Tanzania. In the course of arrest, other suspects managed to escape and one amongst the escapees threw hand grenade to the police. Also, the police managed to seize sub machine guns, hand grenades, loaded magazines, local knives and ammunitions from them. It was also her submission that, The Respondents' associates who are still at large are threatening and intimidating their witnesses and other persons who appear to give information to the police. Such intimidation and threats pose high risks to their witnesses and thus, disclosing them will lead to their victimization. To support her submission, she cited unreported decisions of the High Court in the cases of **The DPP v. Said Adam**, Misc. Criminal Application No. 94 of 2019 and **The DPP v. Said Adam Said**, Misc. Criminal

Application No. 16 of 2022 where the Court granted similar orders as prayed in this application. She concluded by praying for their application to be granted.

I have cautiously considered the contents of the affidavits and the submission by learned Senior State Attorney. It is prudent noting here that, all criminal and economic cases before the High Court are preceded by committal proceedings whereby, the statements and documents containing the substance of the evidence of witnesses whom the DPP intends to call at the trial are disclosed by reading the same to the accused person(s). The rationale behind this process is based on the principle of disclosure whereby, the accused person is required to know the nature of evidence against him before the commencement of the trial. Equally, the whole process is aimed at ensuring a fair trial.

However, such disclosure in serious and sensitive cases like the one at hand may pose risk to such witnesses as far as their safety and well-being are concerned. Thus, their protection is not only paramount but also inevitable in administration of criminal justice. Otherwise, criminal trials will be prejudiced and fruitless because of intimidation and threats to the witnesses. A need to protect witnesses was also discussed by the Supreme Court of India in the case of **Mahender Chawla and Others v. Union of**

**India and Others** (2019) 14 SCC 615 when approving Witness Protection Scheme, 2018 whereby, it was stated as hereunder:

*"The ability of a witness to give testimony in a judicial setting or to cooperate with law enforcement and investigations without fear of intimidation or reprisal is essential in maintaining the rule of law. The objective of this Scheme is to ensure that the investigation, prosecution and trial of criminal offences is not prejudiced because witnesses are intimidated or frightened to give evidence without protection from violent or other criminal recrimination. It aims to promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance to criminal law enforcement agencies and overall administration of Justice. Witnesses need to be given the confidence to come forward to assist law enforcement and Judicial Authority with full assurance of safety. It is aimed to identify series of measures that may be adopted to safeguard witnesses and their family members from intimidation and threats against their lives, reputation and property."*

In our jurisdiction, section 34 (3) of the Prevention of Terrorism Act permits the Court to order the case to proceed in a manner stated in section 188 of the CPA which permits the Court to issue orders that dispense with the disclosure requirement when there is probable risk and danger to the

lives of the intended witnesses following *ex-parte* application by the prosecution.

In the matter at hand, the affidavits supporting the application depict that, the Respondents are facing terrorism charges. It is also in the affidavits that, the Respondents' associates who managed to escape during the arrest are threatening and intimidating prosecution witnesses. Considering the particular circumstances of the case, where the Respondents' associates are still at large, it is the considered view of this Court that, disclosing the identities, particulars and whereabouts of prosecution witnesses during the committal proceedings and trial will expose them to risk of physical harm. Thus, in order to strike balance between the rights of the Respondents to a fair trial under the principle of disclosure on the one hand, and the safety and security of the witnesses on the other, I order the following:

1. The identities of the intended prosecution witnesses be withheld and in lieu, pseudo names such as AB, YZ should be used during committal proceedings and trial.
2. Names, particulars, whereabouts or any fact which on the face of it is likely to lead to the identity of witnesses shall be deleted from the statements of witnesses and any documentary evidence before filing information. However, the same shall be read over during committal proceedings and supplied to the Respondents.



3. With the Rules concerning Remote Proceedings and Electronic Recording in place, I decline to grant or make any order for a trial to be conducted by way of video conferencing at this juncture because such prayer can be made during trial, as the proceedings will be unfolding.

4. The committal and trial proceedings shall be conducted in camera.

5. Publication of statements of witnesses, witnesses' testimony and any part of proceedings in any newspaper and social media during the committal proceedings and trial is hereby prohibited.

The resultant, the application is granted to the extent mentioned above.



**I. K. BANZI**  
**JUDGE**  
**14/07/2022**

Delivered in chambers this 14<sup>th</sup> day of July, 2022 through video link in the presence of Ms. Magreth Mwaseba, learned Senior State Attorney for the Applicant and Ms. Saida Mwinyimbegu, SRMA.



**I. K. BANZI**  
**JUDGE**  
**14/07/2022**