

**IN THE HIGH COURT OF TANZANIA**  
**CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**AT MTWARA**

**MISC. ECONOMIC CAUSE NO. 1 OF 2021**

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

*Versus*

**RAMADHANI S/O HASSAN MAKAI @MAKAI.....1<sup>ST</sup> RESPONDENT**  
**ABDULRAZAK S/O ABDU @ MNIELEWA TUNALILAPA.....2<sup>ND</sup> RESPONDENT**  
**RASHID ISSA KANTOLA @ LIKO.....3<sup>RD</sup> RESPONDENT**  
**SALUM S/O MUSSA MNEMBA.....4<sup>TH</sup> RESPONDENT**  
**BUSRA S/O MAHAMUDU ALLY.....5<sup>TH</sup> RESPONDENT**

**RULING**

**15/11/2021 & 21/01/2022**

**E.B. LUVANDA, J.**

The applicant filed this application by way of chamber summons *ex parte* seeking for an order that witnesses testimony to be given through video conference in accordance with the provisions of the Evidence Act, Cap 6 R.E. 2019; non-disclosure of identity and whereabouts of the witnesses for security reasons during committal and trial proceedings; non-disclosure of statements and documents likely to lead to the identification of witnesses for their security reasons during committal and trial proceeding; any other protection measures as the Court may consider appropriate for security of

the witnesses. This application was supported by affidavit of Paul Kimweri Senior State Attorney and ASP Essau James Ikamaza, Deputy Regional Crimes Officer.

Ms. Mkunde Mshanga, Principal State Attorney submitted that they have preferred this application for witness protection for purposes of preserving testimony because of sensitivity and seriousness of the matter their witnesses be protected in order to defend and balance between the right of the witness, accused persons and interest of public. That, it is stated in our Constitution that the obligation and duty to protect rights and liberty of citizens lies on the state. That, the major problem is about the safety of witnesses and family members who face danger at different stage of a case. That, in many occasion crucial witnesses are threatened and harmed prior to their testifying in court. She submitted that, in that regard if their witnesses are not protected they may be murdered. Due to that reasons, they seek protection of witnesses of terrorism as per the provisions of section 188 Criminal Procedure Act, Cap 20 R.E. 2019. She submitted that witnesses are ears and eyes of criminal justice which is closely related with human justices whereas on the other hand is to be ensured that no innocent person is convicted and thereby deprived of his or her liberty. That it is equal

importance on the other hand that the victim of crimes get justice by punishing the offender, that is why they make an application for witnesses protection. She submitted that over recent years extremist, terrorism, organized crimes have grown and become stronger and more diverse, that is why they pray to the court grant a support in protection of witnesses which will make them free from intimidation and the harm that criminal group may seek to inflict upon them in order to discourage them from cooperating with the law enforcement agencies and deposing before the court of law. The learned Principal State Attorney suggested this procedure to abide to section 246 Criminal Procedure Act, Cap 20 R.E. 2019, by ensuring that there is no infringement to this provision governing committal. In that regard, she suggested that some arrangements will be done like screening some of the exhibits, hiding the names of the victims or disclosing the names and even conducting a trial by video conferencing in order to assist their witnesses to have confidence to appear forward to assist the court and prosecution agency or office. That the whole process of witness protection will enable them and their witnesses to dispose the truthful and fearlessly testimony before the court of law. She cited the case of **DPP vs Said Adam Said and others**, Misc. Criminal Application No. 94/2019 before Honorable Siyani, J

as he then was, who granted non-disclosure of witnesses statement or documents likely to lead to identification of the said witnesses during committal proceedings and trial; **DPP vs Farid Ahmed and others**, Misc. Criminal Application No. 145/2020 before Mlacha, J who also granted an application for witness protection; **Mahender Chawla and others vs Union of India and others**, Criminal Original Jurisdiction Writ Petition (Criminal) No. 156 of 2016, Supreme Court of India, which talk on the scope and justification of the scheme of witness protection. She stressed for the application to be granted.

It is common knowledge that witnesses are crucial in criminal trials and their testimony is vital to judicial and criminal proceedings and effective dispensation of criminal justice generally. Thus hesitation to take effective measures or impose mechanism to protect these witnesses more particular to complex cases like the instant one where witnesses are at risk to be harmed, this will pose serious risk and challenges to criminal trials and threaten the fabric of rule of law and thus compromise access to justice for citizens at large. In this regard, witness protection in criminal proceedings of this nature is crucial and inevitable. The Supreme Court of India in **Mahender Chawla** (supra) at page 23 when stressing the importance of

witness protection, reproduced a preface of Witness Protection Scheme, 2018, I quote,

*'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'*

Generally the provisions governing witness protection (which is still a nascent scheme in our jurisdiction) are crafted in permissible terms. For appreciation I reproduce the same (as were cited as enabling provision to the chamber

application). Section 34(3) of the Prevention of Terrorism Act No. 21 of 2002, provides I quote,

*(3) **A Court may**, on motion by or on behalf of the Director of Public Prosecutions, order that no person shall publish-*

*(a) the name, address or photograph of any witness in any case tried or about to be tried before it for any offence under this Act; or*

*(b) any evidence or any other matter likely to lead to the identification of the witness.*

Section 188 of the Criminal Procedure Act, Cap 20 R.E. 2019 is more elaborate and amplified, it provides I quote,

*(1) Notwithstanding any other written law, before filing a charge or information, or at any stage of the proceedings under this Act, **the court may**, upon an ex parte application by the Director of Public Prosecutions, order-*

*(a) a witness testimony to be given through video conferencing in accordance with the provision of the Evidence Act;*

*(b) non-disclosure or limitation as to the identity and whereabouts of a witness, taking into account the security of a witness;*

*(c) non-disclosure of statements or documents likely to lead to the identification of a witness; or*

*(d) any other protection measure as the court may consider appropriate.*

*(2) Where the court orders for protection measures under paragraph (b) and (c) of subsection (1), relevant witness statements or documents shall not be disclosed to the accused during committal or trial'* bold-font added

In the affidavit in support of this application, the deponents deposed that the respondents (who are facing charges of terrorism) acting in collaboration with their associates who are at large, are struggling to get the identity of the intended prosecution witnesses so as to inflict physical harm upon them in order to stop and impede those witnesses from testifying in court against the respondents. To my view this argument is valid. Frankly speaking, disclosure of the identities and particulars or whereabouts of the intended prosecution witnesses during committal and trial will expose them to risk of physical harm as per deposition. Given the potential risk addressed above, concealment of identities of intended prosecution in PI No. 10/2017 at Mtwara Resident Magistrate Court, is of crucial important.

The only question for deliberation is the extent of non-disclosure. This aspect is of equally important to be addressed, as per the submission of the learned Principal State Attorney, we have to strike the balance between the rights of

the respondents (accused persons) to a fair trial, the rights of the victims and witnesses in particular their safety and security including interest of the public.

In **Farid Ahmed and others** (supra), this Court speaking through Honorable Mlacha, J ordered a total non-disclosure of identities of witnesses including witness statements and documents during committal and allowed only the charge sheet and facts to be read over in lieu thereof. In **Said Adam Said and others** (supra), Honorable Siyani, J also took the same approach, ordered identities of the intended witnesses and their whereabouts to be withheld, non-disclosure of witness statements and documents likely to lead to their identity, and ordered a charge sheet and facts constituting the case to be read at committal. Honorable Tiganga, J followed suit in the case of **Director of Public Prosecutions vs Abdi Sharif Hassan @ Msomali and another**, Misc. Criminal Application No. 19 of 2020, High Court at Mwanza District Registry. Herein, I make a departure and took a liberal approach, as a matter of compliance to the mandatory provisions of section 246 vis-à-vis section 188(1) and (2) Cap 20 (supra) and order the following:



1. The identities of the intended prosecution witnesses in PI No. 10/2017 at Mtwara Resident Magistrates Court be withheld, including their names and whereabouts, during committal proceedings and trial.
2. Arrangement be done by the National Prosecution Services to make a thorough examination or assessment and screen all the witness statements and documents to eliminate and delete all names, particulars or any fact which on the face of it will likely lead to the identity of witnesses before the same are read over during committal proceedings. But the said witnesses statements or documents shall not be supplied or availed to the accused persons or defence Counsel.
3. Or in the alternative to the above (2), the National Prosecution Services to prepare a comprehensive summary of detailed facts without disclosing identities and whereabouts of witnesses, which will enable the respondents (accused persons) to know the gist and substance of the prosecution story or evidence.
4. I decline to grant or make any order for a trial to be conducted by way of video conferencing at this juncture. To my view, this prayer can be conveniently made and deliberated during trial.

The application is granted to the extent depicted above.



E.B. Luvanda  
**Judge**  
**17.01.2022**