

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
THE CORRUPTION AND ECONOMIC CRIMES DIVISION
TANGA SUBREGISTRY**

MISC. ECONOMIC CAUSE NO. 1 OF 2018

*(Arising from Economic Crime Case No. 1 of 2018 at the District Court of Muheza at
Tanga)*

ANETH JOHN MAKAME APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

R U L I N G

Date of last Order: - 8/5/2018

Date of Ruling: - 9/5/2018

W.B. KOROSSO J.

The application before the Court is filed by Aneth John Makame via chamber summons pursuant to section 29(4) (d) and 36(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 (hereinafter referred to as EOCCA). On the date fixed for hearing of the application, the learned State Attorney Ms. Jennifer Kaaya representing the Respondent Republic informed the Court that they had filed a notice of preliminary objection challenging the jurisdiction of this court to hear and determine the application under

consideration. Upon being questioned whether or not the applicant has been served, Mr. W. R. Mramba, learned Advocate representing the applicant informed the Court that they were served with the said notice in the morning hours on the same day of hearing but stated so as not to cause further delay, hearing of the raised Preliminary objection may proceed.

Ms. Kaaya, Learned State Attorney when amplifying their preliminary objection points, submitted that, having regard to section 29(4)(d) of EOCCA, one of the provision cited by the applicants to move the Court to entertain the application, provides that the Court with jurisdiction to hear and determine the bail application related to the pending case against charges facing the applicant at the District Court of Muheza, is the High Court- general registry. The learned State Attorney argued that the current application has been improperly filed in the Division of Corruption and Economic Crimes which has no jurisdiction to entertain the said application for bail since it is not the High Court as prescribed under S. 29(4)(d) of EOCCA. She contended further that section 29(4)(d) of EOCCA confers jurisdiction to the High Court to entertain bail applications emanating from an economic offence where the charged amount is above Tshs. 10,000,000/-. To support this contention the respondents cited the holding by Hon. Dr. M. C. Levira J., in Misc. Economic Case No. 1 of 2017, ***Josephat Joseph Mushi and 8 Others vs. Republic*** at High Court Mbeya., delivered on the 5/6/2017 where the Court held that the Division of Corruption and Economic Crimes of the High Court lacks jurisdiction to entertain a similar application and proceeded to dismiss the application for want of merit.

Upon request for more time to prepare, the applicants advocate was granted by the Court a few hours to prepare and came back with a response. In his reply, the applicants counsel submitted that the preliminary objection raised by

the respondents was devoid of substance since the application is before the Corruption and Economic Crimes Division of the High Court and thus a High Court and not a Court of Resident Magistrate, a District Court nor a Primary Court. That the High Court has various divisions and all divisions are part of the High Court. That the sitting Court, sitting as the Division of Corruption and Economic Crimes is still the High Court. The applicants counsel alluded to the definition of the High Court as provided in section 3(1) of EOCCA. Further stating that, the mandate to entertain economic crimes is in the High Court sitting as the Economic Crimes Court and therefore the applicants have not erred in any way in filing the application in this Court, the Division of Corruption and Economic Crimes of the High Court.

The applicants counsel cited the case of ***Jeremiah Madale Kerenge and Another vs. Republic***, Misc. Economic Cause No. 1 of 2016 - Division of Corruption and Economic Crimes of High Court Dar es Salaam Registry and stated that in the said case, the respondents had filed a preliminary objection similar to the one filed by respondents in the current case alleging that this Court lacks jurisdiction. That the holding by the Court at page 3 of the Ruling, was to dismiss the objection saying it lacked merit and that the Division of Corruption and Economic Crimes had jurisdiction, and proceeded to hear and determine the merits related to the application for bail. It was thus the applicant's counsel prayer that the objection be found devoid of merit and Court proceed to hear and determine the application.

The respondents counsel submitted a brief rejoinder, mostly reiterating the contents of their submission in chief in support of the preliminary objection raised. The learned State Attorney challenged the assertion by the applicants counsel on what section 3 of the EOCCA prescribes, stating that what was read

aloud in Court by the counsel were contents which were repealed by virtue of section 8 of Act No. 3 of 2016 and thus it is no longer the position of law. That the amendments brought by Act No. 3 of 2016 related to defining a Court with mandate to hear and determine charges related to offences prescribed in the EOCCA. That it is against that position, which has led them to challenge the jurisdiction of the Court to hear the application given that section 29(4)(d) of EOCCA was not amended while other provisions were amended to incorporate the Division of Corruption and Economic Crimes of the High Court. Arguing further that the act of not amending the said provision left the jurisdiction to hear and determine bail application to the High Court general registry and that this meant the Division of Corruption and Economic Crimes of the High Court was excluded. That if that was what the provision or the Parliament had wanted for the Division of Corruption and Economic Crimes of the High Court to entertain bail applications within the purview of section 29(4)(d) of EOCCA, the provision should have clearly prescribed thus by amending the provision accordingly.

The learned State Attorney also conceded the fact that in the case cited by the applicants counsel, that is ***Jeremiah Kerenge's case***, this Court held that it had jurisdiction to entertain such bail application, moved by section 29(4)(d) of EOCCA, but the learned State Attorney contended that the case they had cited was that of ***Josephat J. Mushi*** (supra) which is more recent than ***Jeremiah Kerenge case***, and it was pertinent for the Court to take into account the decision of ***Josephat Joseph Mushi and others vs. Rep (supra)***. The respondents thus prayed that the Court find it lacks requisite jurisdiction and dismiss the application for want of jurisdiction.

This being a preliminary objection, we start by considering whether the preliminary objection raised is a point of law. It be sufficient to say there was no

registered objection on the part of the applicants on this issue. We are aware of the holding in ***Mukisa Biscuits Manufacturing Company LTD vs. West End Distributors LTD*** (1969) EA 696, providing that such an objection has to be purely on points of law. We find that the fact that the challenge is with regard to the jurisdiction of this Court to hear and determine the application before the Court, and that Jurisdictional matters are the crux of any proceedings, since they address the mandate of a Court to determine matters before it. We find that the point of objection before the Court, is without doubt a point of law since it can in effect lead to disposal of the application and is grounded on law.

We wish to point out clearly, that as asserted by the learned State Attorney, section 3 of the EOCCA was amended vide section 8 of Act No. 3 of 2016 and therefore section 3(2) now prescribes that the Court hearing offences in the EOCCA shall be the Division of Corruption and Economic Crimes of the High Court repealing the former provision which established the Economic Crimes Court. Therefore, we are of the view that the applicant's counsel assertions on the contents of this provision are misconceived.

We have had an opportunity to consider all the submissions presented and also all the cited cases by the counsels for respondents' and applicant on the raised objection point. Our understanding of the respondent's position is that the amendments introduced by Act No. 3 of 2016, where the charged property amount is ten million or above, left the jurisdiction to determine bail with the High Court - General registry. That this can be discerned from the fact that when the Parliament was amending various provisions of section 29 of EOCCA, left section 29(4)(d) of EOCCA intact and that this was deliberate. At the same time, the respondents argued that the cited case by the applicants, that is, the holding in ***Jeremiah Kerege case (supra)*** by Hon. Judge Mkuye (as she then was)

should not be considered because the said decision was based on wrong interpretation of the law having improperly invoked purposive interpretation in arriving at the conclusion they did. On the other hand the applicant's counsel felt that the respondent's objection is misconceived having failed to understand that the Corruption and Economic Crimes Division is a division of the High Court and thus a High Court.

We find it pertinent to import section 29(4) of the Act for ease of reference. It reads:

"After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purposes of this section the power to hear bail applications and grant bail-

(a) between the arrest and the committal of the accused for trial by the Court, is hereby bested in the district court and the court of a resident magistrate if the value of any property involved in the offence charged is less than ten million shillings;

(b) after committal of the accused for trial but before commencement of the trial before the court, is hereby vested in the High Court:

(c) after the trial has commenced before the Court, is hereby vested in the Court;

(d) 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.

It is important to note that Section 29(4)(a) relates to applications for bail between arrest and committal of the accused where the value of the property in the charges is less than ten million shillings and a District Court may proceed with hearing. Section 29(4)(b) provides for bail applications hearing after committal but before the trial commences and the jurisdiction lies in the High Court. Section 29(4)(c) relates to bail application hearing after the trial commences and jurisdiction vested on this Court. That section 29(4)(d) applies where the value of the property in the charges facing the applicants/accuseds' is beyond ten million shillings and it is at any stage before commencement of trial and it states that the jurisdiction is vested in the High Court. It should be understood that at the time of enactment of this Act prior to the 2016 amendment, the Court was defined in section 3 which stated:

Section 3(1) The jurisdiction to hear and determine cases involving economic offences under this Act is hereby vested in the High Court.

Section 3(2) The High Court when hearing charges against any person for the purposes of this Act shall be an Economic Crimes Court.

We find it significant to bear in mind that the current subsection 4 of section 29 of the Act was inserted in the amendments contained in the Economic and Organized Control (Amendment) Act, No. 12 of 1987 and at that time, the "Court" defined as the High Court sitting as an Economic Crimes Court was a High Court Judge sat with two lay members under Section 4(2). With the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016 vide section 6, the definition of the term "Court" was substituted to mean the Corruption and Economic Crimes Division of the High Court established under section 3 of the Act. By virtue of section 8 of Act No. 3 of 2016, section 3 of the Act is repealed and reads:

Section 3(1) *There is established the Corruption and Economic Crimes Division of the High Court with the Registry and Sub registries as may be determined by the Chief Justice, in which proceedings concerning corruption and economic cases under this Act may be instituted.*

Section 3(2) ...

Section 3(3) The Court shall have jurisdiction to hear and determine cases involving

(a) corruption and economic offences specified in paragraphs 3 to 21 and paragraphs 27, 29 and 38 of the First Schedule whose valued is not less than one billion shillings, save for paragraph 14.

(b)

(c) ...

Section 9 of Act No. 3 of 2016 provides for the amendments of section 29 of the Act

(a) in subsection (3) by deleting the words "High Court" sitting as the Economic Crimes Court" and substituting for them the words "Corruption and Economic Crimes Division of the High Court".

(b) in subsection (7) and (8) by deleting the words "High Court" and substituting for them the words " Court" respectively.

It is clear that the establishment of the Corruption and Economic Crimes Division of the High Court vide Act No. 3 of 2016, was not for the purpose of creating a Court separate Court from the High Court, since the Division is not outside the ambit of the High Court established under Article 108(1) of the Constitution of the United Republic of Tanzania. Also remembering that the Civil and Criminal Jurisdictions of the High Court are derived under section 2(1) of the

Judicature and Application of Laws Act, Cap 358 RE 2002. At the same time, Article 108(2) empowers the High Court to hear matters that the law does not specifically provide for but as stated by Hon. Judge Twaib in ***Kelvin Rajabu Ungele and 3 others vs Republic*** (supra), the article recognizes the existence of other legislation that vest jurisdiction on other Courts or fora, or legislations such as the EOCCA.

There is no qualm as submitted by the learned State Attorney for the respondents, that the amendments contained in Act No. 3 of 2016 on the EOCCA, do not touch on section 29(4)(d) of EOCCA. This fact was also noted by learned Hon Judges in ***Jeremiah Kerenge (supra) Josephat Joseph (supra)*** cited in this case by counsels and also in ***Kelvin Rajabu Ungele (supra)*** and in ***Athanas Sebastian Kapunga and 7 others vs. Rep.***, Misc. Economic Cause No. 7 of 2017 (HCT- Mbeya). But the question remains was the act of not amending subsection (d) of Section 29(4) of the EOCCA made intentionally as argued by the Respondent Republic? Also if that is the case, was the intention of the legislature to enact a law that propounds that the jurisdiction of the Division of Corruption and Economic Crimes of the High Court only begin after committal proceedings? We find asking the said questions leads one to also ask was the intention of the legislature in leaving the provision as it is? For the respondents, the contents of section 29(4)(d) of the Act means this Court has no jurisdiction to entertain bail applications where the amount of property in the offence charged is above ten million in a matter before commencement of trial and that it is the High Court - general registry with that jurisdiction. While for the applicants this is not the case.

On our part, we have carefully gone through the contents of section 29(4)(d) of the Act, and we are inclined to share the position held by Hon. Mkuye in **Jeremiah Kerenge's case (supra)** and Hon Twaib in ***Kelvin Rajabu Ungele (supra)*** and also find no reason to depart from a Ruling by Korosso J., in ***Athanas Kapunga and 7 others*** (supra), that the act by the Parliament in their omission to amend section 29(4)(d) of the Act, was done inadvertently. We have come to this conclusion by taking the matter in perspective. When you take section 29(4)(d) of the Act as it is, we are of the view that this will mean that before commencement of trial at the Corruption and Economic Crimes Division of the High Court, the general High Court registry is the only Court that has jurisdiction to entertain bail applications of any amount above ten million even if it was above one billion and no other Court may proceed as such. That it is only after commencement of the trial, at the Corruption and Economic Crimes Division of the High Court, that it is only then that the said Division will have jurisdiction to determine bail applications notwithstanding the amount. If this will be taken to be the case, then we find absurdity since it does not really augur well with the import of the amendments brought about by Act No. 3 of 2016 as they relate to section 3(3) of the Act.

We thus are of no doubt that having regard to the contents of other amended provisions and the cited rationale for the amendments. The intention of Parliament with the amendments to the provision we find was without doubt to establish the Corruption and Economic Crimes Division of the High Court and do away with the High Court sitting as an Economic Crimes Court as it then was. We find this envisaged at having the Corruption and Economic Crimes Division of the High Court taking over from the Economic Crimes Court to hear and determine High Profile Corruption and Economic cases hence, the charged amount of Tshs.

one billion threshold for most of the offences and not putting a threshold for other offences such as those contrary to Wildlife Conservation Act or those specified paragraphs under Section 3(3)(b) of the Act and those instituted in Court under section 3(3)(c) of the Act, in effort to show the underlying purpose of establishing the Division and what it was expected to undertake and achieve in the administration of justice.

In effect our approach is the use of purposive interpretation in construction of section 29(4)(d) of EOCCA. It has been argued that purposive interpretation of statutory provisions should only be invoked where a provision is arbitrary or there is a lacunae. In ***Josephat Joseph Mushi case*** (supra) Hon. Dr. Levira Judge found no grounds to invoke purposive interpretation of section 29(4)(d) of the Act stating, that the plain meaning of the provision is clear and that it expounds that the powers of this Court to entertain bail application are only exercised after the commencement of trial and not before. We find ourselves with due respect not persuaded with Hon. Judge Dr. Levira arguments and position in arriving at the conclusion she did, that this Court has no jurisdiction to determine bail application under the stated provision since there is absurdity to be cured as stated hereinabove. Respectfully, we find that had Hon. Dr. Levira Judge, considered the essence and *raison d'être* of the amendments to the Act, introduced by Act No. 3 of 2016, she would have found that the amendments to the Act were not intended to restrain the powers of the Corruption and Economic Crimes Division of the High Court from entertaining bail applications related to corruption and economic offences nor were they intended to leave only to the general High Court Registries powers to entertain such applications.

We find it important as expounded by various cases some already alluded to hereinabove that, a provision of a statute should be read in the context of other provisions in a statute. Therefore, it is pertinent for one to have a general context/purview of the import of the amendments to the Act under Act No. 3 of 2016 when interpreting specific provisions. In doing this, it will lead one to ensure that section 29(4) of the Act is read together with section 3 (3) of the Act, as amended by Act No. 3 of 2016 when applying it.

In effect the absurdity to be cured as held by Hon. Twaib J. in ***Ungele's case***, is the omission to amend section 29(4)(d) which may lead to bail applications related to accused persons charged with offences valued at even above Tshs. one billion before commencement of trial before this Court, to be determined by the general registries of the High Court which have no powers to proceed with trials of those cases by virtue of Section 3(3) of EOCCA.

We also venture to consider the argument by the learned State Attorney that this Court should be persuaded by the decision in Josephat Joseph Mushi case because it is more recent than the decision of ***Jeremiah Kerenge's case***. Suffice to say it should be understood that all the decisions cited on this issue are High Court decisions having persuasive value to this Court and in any case the most recent decision on this issue is the one of ***Athanas Sebastian Kapunga and 7 others*** (supra) which was decided in October 2017 after the ***Josephat J. Mushi's case*** (supra). That case dismissed a similar objection as the one before this Court. This Court has also provided reasons hereinabove why it has decided to be persuaded by some of the decisions cited hereinabove and not ***Josephat J. Mushi's case*** (supra) holding.

There is also another important factor to consider, that is, the fact that it is not only section 29(4)(d) of EOCCA which was cited to move the Court in this application. There is section 36(1) of the EOCCA which was not amended by Act No. 3 of 2016. For this discussion we find important to import the said provision it reads:

"After a person is charged but before he is convicted by the Court, the Court may on its own motion or upon an application made by the accused person, subject to the following provisions of this section, admit the accused person to bail".

By virtue of the holding in ***Hassan Othman Hassan @Hassanoo***, Criminal Appeal No. 193 of 2014, Court of Appeal at Dar es Salaam, (unreported) delivered on the 5th of February 2016, when considering the import of section 36(1) of EOCCA at pg. 6 stated:

"Section 36(1) of Cap 200 is clear. It empowers the Court (meaning the High Court sitting as an Economic Crimes Court pursuant to section 3) to grant bail to an accused person".

We understand this decision was before the amendment, but after the 2016 amendments, that is Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016, amending the EOCCA, vide section 8 now section 3(1) reads:

"There is established the Corruption and Economic Crimes Division of the High Court...". And vide section 6 of the amendment act, it amends section 2 of EOCCA regarding the definition of the "Court" now to mean: *"the Corruption and Economic Crimes Division of the High Court established under section 3".*

Section 36(1) refers to a "Court" and by deduction, it means the Corruption and Economic Crimes Division of the High Court. We thus find that there is no doubt that when you consider both section 29(4)(d) and 36(1) of the EOCCA, the

Court referred to is the Division of Corruption and Economic Crimes of the High Court, that is this Court.

Upon consideration of all the surrounding factors and for reasons presented hereinbefore, and also bearing in mind what we deem to be the purpose of the provision within the context of the overall aim of the statute, we are of the view that a more reasonable approach to address what we find to be an absurdity in the provision that is section 29(4)(d) of EOCCA as it stands is that the High Court referred to in that section also embraces the Division of Corruption and Economic Crimes of the High Court, for reasons outlined above.

Consequently, the Preliminary objection raised by the respondents is overruled and dismissed. We find that this Court is vested with jurisdiction to hear and determine the current application within the purview of the Economic and Organized Crime Control Act, Cap 200 RE 2002. In the premises, for reasons alluded to above let hearing of the bail application before this Court proceed. Ordered.



Winfrida B. Korosso

JUDGE

9th May 2018

Date 9/5/2018

Coram: Hon. W.B. KOROSSO, J.

Advocate for Applicant:

Applicant: W.R. Mramba, Advocate

Respondent – Jenifer Kaaya – State Attorney

C/c: Tinabeth

State Attorney:

The matter is for Ruling and we are ready.

Court:

Ruling delivered in Chambers this day in the presence of Ms. Jenifer Kaaya learned State Attorney representing the Respondent/ Republic and Mr. W.R. Mramba learned Advocate for the Applicant. Also present the applicant Aneth John Makame.

