**IN THE HIGH COURT OF TANZANIA**
**DARE ES SALAM DISTRICT REGISTY**

**AT DAR ES SALAAM**

**MISC. ECONOMIC CAUSE NO. 248 OF 2019**
**(Originating from Economic Case No. 111 of 2019 in the Resident Magistrate Court of Dar es Salaam at Kisutu)**

**JOASH JUMBURA NYAMASAGARA.....APPELLANT**

**VERSUS**

**THE REPUBLIC .....RESPONDENT**

**RULING**

*17th and 20th December, 2019*

**Kisanya, J.**

The applicant, one Joash Jumbura Nyamasagara has applied for bail pending hearing. He is charged in the Resident Magistrate's Court of Dar es Salaam at Kisutu with **forgery** contrary to sections 333, 335(a) and 337 of the Penal Code (R.E. 2002); **uttering false documents** contrary to section 341 the Penal Code (R.E. 2002) and **obtaining money by false pretence** contrary to section 302 of the

Penal Code (Cap. 16 R.E. 2002). The fourth count is **money laundering** contrary to section 12 of 2006 read together with paragraph 22 of the Economic and Organized Crimes Control Act, (Cap. 200 R.E. 2002) as amended.

The application is made under section 29(4)(d) of the Economic and Organized Crimes Control Act, Cap. 200 R.E. 2002 as amended by Written Laws (Miscellaneous Amendments) Act No. 3 of 2016. At the hearing of this application, the applicant appeared in person, unrepresented. The Republic on the other side was represented by Mr. Adolph Kisima, learned State Attorney.

Before proceeding with the main application, the learned State Attorney raised an objection on point of law that this Court has no jurisdiction to entertain the matter. He argued that the applicant is charged with offence of money laundering which is not bailable. The learned State Attorney argued further that the application is incompetent for lack of enabling provision which empower this Court to determine whether count of money laundering money is defective as averred and prayed in the affidavit.

The applicant conceded that one of the count in the charge sheet is money laundering. However, he argued that the said count is defective because it is based on offence forgery which does not have monetary value to the extent leading money laundering and that obtaining money by false pretence is not a predicate offence.

It is a settled law that bail is the right of the accused. Bail is based on the principle of presumption of innocence and the right to personal freedom enshrined under Articles 13(6)(b) and 15(2) of the Constitution of United Republic of Tanzania, 1977. Thus, denial of bail must be justified and provided in the law. One of the provisions which curtails bail to accused is section 148 (5) of the Criminal Procedure Act, which outlines offences which are not bailable.

Upon hearing submissions on objection raised by the learned State Attorney, the following issues need to be addressed;

(a) Whether this Court can determine defectiveness of offence of money at this stage; and

(b)Whether of money laundering is bailable.

Starting with the first issues, the applicant argues at length how he is entitled to bail because the fourth count on money laundering is defective. This is deduced from the following paragraphs of his affidavit;

***5.*** *That, your lordship the 4$^{th}$ count on money laundering which is barring bail is therefore in substance for the reasons I will endovour (sic) herein after.*

***9.*** *That, since obtaining money by false pretences is not a predicate offence then there exists no offences of money laundering and therefore no economic offence as charged."*

Therefore, it is clear as submitted by the State Attorney that the

applicant wants this Court to hold the fourth count on money laundering is defective. This prayer was not stated in the Chambers Summons. Further, section 29(4) (d) of the Economic and Organized Crime Control Act (Cap. 200 R.E. 2002) does not enable this Court to determine whether a charge is defective. That render this application incompetent before this Court

Even if is considered that the applicant has not prayed for the court to hold count of money laundering defective, the issue whether the said count is defective or not cannot be determined by this Court at the time of determining application for bail. It should be dealt with during trial.

I now move to the second issue on whether offence of money laundering is bailable for this Court to determine this application. As rightly submitted by the learned State Attorney, offence money laundering not bailable. This is provided for under section 148(5) of the Criminal Procedure Act (Cap. 200 R.E. 2002) which reads:

> *"A police officer in charge of a police station or a court before whom an accused person is brought or appears, shall not admit that person to bail if—*
> *(a) that person is charged with—*
> *(v) money laundering contrary to Anti- money Laundering Act"*

I am aware that offence of money laundering is also an economic offence listed in paragraph of 22 of the First Schedule Economic and Organized Crime Control Act (Cap. 200) as amended by the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2016. However, it is

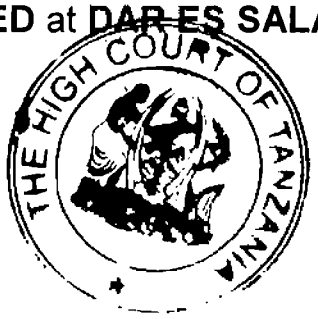
not bailable because section 148(5)(a)(v) of Cap. 20 (*Supra*) has not been amended. This position was also stated in the case of **James Burchard Rugemalira vs The Republic,** Criminal Appeal No. 391 of 2017 when the Court of Appeal held:

> *"In view of the above, we accept Mr. Nchimbi's argument that money laundering is a serious offence, and that in not expressly providing that the offence is not bailable, Parliament could not have intended it to be bailable.... We say so because Section 148(5)(a)(iv) of the CPA has not been amended to remove money laundering from the list of non-bailable offences."*

Therefore, considering that the applicant stand arraigned for money laundering which is not bailable, I agree with the learned State Attorney that this Court has no jurisdiction to determine the present application. For the aforesaid reasons, I accordingly order that this application is hereby be struck out for being incompetent before this Court.

It is so ordered.

**DATED** at **DAR ES SALAAM** this **20th** day of **December, 2019.**




E.S. Kisanya

**JUDGE**