IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE CORRUPTION AND ECONOMIC CRIMES DIVISION
AT DAR ES SALAAM

MISC. ECONOMIC CAUSE NO. 21 OF 2017

(Originating from Dar es Salaam Resident Magistrates' Court at Kisutu in Economic Case No. 27 of 2017)

JAMES BURCHARD RUGEMALIRA ..... APPLICANT

VERSUS

THE REPUBLIC ..... RESPONDENT

Date of Last Order: - 04/08/2017
Date of Ruling: - 30/08/2017

RULING

F.N. MATOGOLO, J.

This ruling emanates from an application for bail made by way of chamber summons under section 148(1) & (5)(e) of the Criminal Procedure Act, [CAP. 20 R.E, 2002] and sections 29(4)(d) and 36(1) of the Economic and Organized Crimes Control Act, [CAP. 200 R.E, 2002]. The applicant prayed to this Court to admit him to bail and impose reasonable conditions in Economic Crimes Case No. 27 of 2017 pending committal proceedings at the Resident Magistrates' Court of Dar es Salaam at Kisutu.

The chamber summons is supported by an affidavit sworn by the applicant himself and filed on 03/07/2017.

Initially; on 19/06/2017, the applicant was charged before Dar es Salaam Resident Magistrates' Court at Kisutu with four counts of conspiracy, leading organized crime, obtaining money by false pretense and occasioning loss to a specified authority. But on 03/07/2017, the said charge was

substituted by another charge bearing twelve counts of which seven of them implicates the applicant in particular.

On 13/07/2017 when the matter was for mention, the applicant's counsel prayed to file a supplementary affidavit so as to reflect matters featured in the substituted charge dated 03/07/2017 which included money laundering counts. The said supplementary affidavit was filed on 17/07/2017 with the respondent filing Counter Affidavit on 24/07/2017.

Hearing of the bail application was agreed to be by oral submissions. The applicant was represented by Mr. Michael J.T. Ngalo, Respicius Didace, Cuthbert Tenga, Pascal Kamala and John Chuma learned advocates while the Republic/Respondent was represented by Dr. Zainabu Mango Diwa, learned Principal State Attorney.

Arguing for merits of the application, in the first instance, Mr. Didace learned advocate prayed that both the affidavit filed on 28/06/2017 and supplementary affidavit filed on 17/07/2017 to form integral part of his submission. Addressing the Court on tenets worth to be considered by this Court, Mr. Didace learned advocate quoted a High Court decision in **Raza Hussein Ladha & 9 Others vs. Director of Public Prosecutions,** Misc. Criminal Applications No. 32 & 43 of 2014, (Dar es Salaam Registry), (Unreported) as his opening remarks, where the Court at page 23 observed that:-

> **"Under the NPS Act the respondent is directed as hereunder:**
>
> **"S. 8. In the exercise of the powers and performance of his functions, the Director shall observe the following principles:**
>
> **(a) The need to do justice;**

(b) The need to prevent abuse of legal process; and

(c) The public interest".

The applicant's counsel further cited **Hamisi Ismail @ Chiga vs. the Republic,** Criminal Appeal No. 75/2010, (Dar es Salaam Registry), (Unreported) where the Court of Appeal insisted on the essence of attaining justice where it observed the following at page 1:-

> **"It is now universally accepted that the role and public duty of the prosecutor in the administration of justice is not to earn a conviction at all costs; it is to do justice by ensuring that the guilty shall not escape and the guiltless are not wrongly convicted .....".**

Giving background of the case, Mr. Didace submitted that; the accused was on 19/06/2017 charged with four offences in economic criminal case number 27 of 2017 that is; conspiracy, leading organized crime, obtaining money by false pretenses and occasioning loss to a specified authority. On 03/07/2017, the applicant filed an application for bail that is, this respective bail application whereas on the same date, that is, on 03/07/2017, the respondent substituted the charge dated 03/07/2017.

Mr. Didace learned counsel argued that; in addition to the filed charge sheet, the substituted charge introduced three counts of money laundering as reflected in the 7th, 10th and 11th counts of the substituted charge. It was through that new substituted charge that when the matter came for mention on 13/07/2017, the applicant's counsel prayed to file a supplementary affidavit, the prayer which was granted by this Court.

The said supplementary affidavit was filed and served to the DPP's office but to date, the same has never been controverted. This is noted by the fact that on 24/07/2017 when the matter came for the purposes of scheduling hearing of the application, Dr. Zainabu Mango Diwa, Principal State Attorney informed this Court that pleadings were complete and that the matter was ready for hearing.

Eloquently; Mr. Didace submitted that, as a matter of law, a proper offence of money laundering is not bailable. That notwithstanding, it is a demand of law that to have a proper charge, the particulars of the charged offence must establish the offence stated in the charge sheet. From the above, the applicant's counsel urged this Court when considering bail, to consider if particulars of the charged offences establish money laundering. He recited **Raza Hussein Ladha & 9 Others vs. Director of Public Prosecutions** (supra) where at pages 16 & 17 the Court observed:-

> **"..... the new substituted/amended charge of murder ought to have disclosed ingredients of the offence that is to say "the ACTUS REUS" and "MENS REA" ..... In here the essential elements of the murder charge were not disclosed. .....".**

The above position was emphasized by the Court of Appeal in the case of **Mussa Mwaikunda vs. Republic,** [1996] T.L.R 387 that an accused must know nature of the case facing him the same which can be achieved if the charge sheet equally discloses elements of the charged offence. In another case of **Oswald Abubakari Mangula vs. Republic,** [2001] T.L.R 271, the Court of Appeal observed that it is a salutary rule of law that no charge stand to be put on an accused before the Magistrate is satisfied inter alia that, it discloses an offence known in law.

Another case regarding need of disclosure of the ingredients of the charged offence is a High Court decision in **Wilfred Lwakatare & Another vs. Republic,** Misc. Criminal Application No. 14 of 2013 (Dar es Salaam Registry), (Unreported). Mr. Didace urged that, since the charged offences do not disclose ingredients of money laundering, this Court should struck out the counts on money laundering and admit the applicant on bail, as was done in **Raza Hussein Ladha & 9 Others vs. Director of Public Prosecutions** (supra), where the Court struck out a substituted charge of murder and ordered the applicants to be admitted to bail. The applicant's counsel further cited a Court of Appeal decision in **Isidori Patrice vs. the Republic,** Criminal Appeal No. 224 of 2007, (Arusha Registry), (Unreported) where the Court underscored at page 14 that:-

> **" ..... It is a mandatory statutory requirement that every charge in a subordinate Court shall contain not only a statement of the specific offence with which the accused is charged but such particulars as may be necessary for giving reasonable information as to the nature of the offence charged. .....".**

Further reference was made to page 18 of the same case where the Court cited the case of **Uganda vs. Hadi Jamal** [1964] E.A. 294 in which it was observed that:-

> **"A charge which did not disclose any offence in the particulars of the offence was manifestly wrong and could not be cured under section 341 of the Criminal Procedure Code (the equivalent of our section 388 of the Act)".**

Regarding whether the charge sheet discloses the charged offence of money laundering or not, Mr. Didace advocate submitted that, investigation of the offences are alleged to have been committed between 2011 and

2014 but the date of arraignment never established the charged offence of money laundering, the reason why the charge of money laundering was not included in the first charge, rather, it was a two weeks investigation (if any) as the applicant was never interviewed regarding the newly charged offences which has implicated the applicant with money laundering.

The applicant's counsel argued that, according to paragraph 7 of the supplementary affidavit which stands uncontroverted, the purposes of introducing money laundering offences was to deny bail to the applicant. As to whether the referred money was laundered or not, Mr. Didace argued that, according to paragraphs of the supplementary affidavit, the referred money is a result of an amount that VIP received as its share from Independent Power Tanzania Limited (IPTL) paid by Pan African Power (T) Limited (PAP) in accordance with a share purchase agreement whereas there was no at any point in time did VIP dealt with money in the Escrow Account as stated in paragraph 17 that annexes copies of purchase agreement between VIP and PAP. At paragraph 27 also it was clearly explained that, the amount paid was pursuant to a Court Order and that VIP paid taxes.

Besides; there is a statement of the President of December, 2014 that the money belongs to IPTL. According to paragraph 35, there is enough evidence that the charge of money laundering and other charges are misplaced and the applicant is entitled to bail. Mr. Didace learned counsel stressed that, such state of affairs is built on the fact that the respondent did not file a Counter-affidavit in response to the supplementary affidavit as a matter of right and basing on the principle that evidence by affidavit can only be controverted or rather challenged by a Counter Affidavit, thus, in

absence of a Counter Affidavit challenging contents of the Supplementary affidavit goes to the roots to the effect that the respondent admitted contents of that supplementary affidavit.

Mr. Didace argued that, contents of the 5th count are similar to those in the 7th count thus posing a challenge as to what marks their difference. Section 12 of the Anti-Money Laundering Act, 2006 creates an offence, that is when a person engages directly or indirectly, in a transaction that involves laundering of property proceeding from a predicate offence while he knows or ought to know or ought to have known that the property is the proceeds of a predicate offence whereas a predicate offence is defined under section 3 of the Act to cover a litany of offences including that of theft but with a captioned word that the same must have been laundered.

Mr. Didace strenuously argued that financial gain cannot be said to be money laundering. Mr. Didace outlined elements of money laundering to include:- existence of criminal activities, criminal activities that generate illegal or dirty money, that is, cleansed from its illicit origin and the involved persons must be aware of the criminal activities and must participate in cleaning the money. Thus, laundering means to clean or conceal the origin.

From the above, Mr. Didace argued that the 10th and 11th counts of the charge sheet are far from supporting the charged offence of money laundering. He referred this Court to article 13(6) (b) of the Constitution of the United Republic of Tanzania, [CAP. 2 R.E, 2002] that a person is presumed innocent until the contrary is proved. Further reference was made to the High Court decision in **Li Ling Ling vs. Republic,** Misc. Economic Application No. 129/2015, (Dar es Salaam Registry), (Unreported)

where regarding bail contemplation, the High Court underscored at page 6 that:-

> " ..... **Bail is contemplated to procure the release of a person from legal custody by undertaking that he shall appear at the time and place designated and submit himself to the jurisdiction of the Court. .....".**

The applicant's counsel made further reference to the case of **Prof. Dr. Costa Ricky Mahalu & Another vs. The Hon. the Attorney General,** Misc. Civil Cause No. 35 of 2007 (Dar es Salaam main Registry), (Unreported) where the High Court observed that Courts should not remand a suspect in order to punish him. Besides; at page 8 in that case the Court cited article 13 of the Universal Declaration of Human Rights regarding freedom of movement within borders of his own country.

Moreover; in the case of **Basil Pesambili Mramba & Another vs. the Republic,** Misc. Criminal Application No. 54 of 2008 (Dar es Salaam Registry), (Unreported) the High Court at page 6 observed that accused persons are mere suspects and they should not be considered as convicts and that in bail, the Court should just secure their attendance at the trial.

Additionally; in the case of **Henry Kileo & Others vs. Republic,** Misc. Criminal Application No. 53 of 2013, (Tabora Registry) (Unreported) the High Court emphatically underscored at page 16 that, the charge sheet must amply disclose the charged offence whereas at page 40 of the said judgment, the Court discouraged tendency of the prosecution side to see accused persons retained in custody without granting them bail. Mr. Didace learned counsel recited the High Court decision in **Raza Hussein Ladha & 9**

Others vs. Director case (supra) where the Court observed at page 22 that:-

> **" ..... It appears that the respondent did not wish/like to see the applicants out on bail. .....".**

Furthermore; Mr. Didace urged this Court to impose reasonable bail conditions in line with the High Court decision in **Prof. Dr. Costa Ricky Mahalu & Another vs. The Hon. the Attorney General** (supra) at page 32 that, the law does not provide control mechanisms to drafters of charge sheets as what has been stated in the charge sheet at hand in respect of the charged offences differs from what is in the public domain and knowledge as stated in the PAC report. Thus, in case this Court grants bail to the applicant, the Court should consider that the charges revolves around acts of the IPTL whereas the IPTL plant in Tegeta is still operational and has value exceeding the charged amount, that is, there is no risk.

Further reference was made to the case of **Rashid Ndimbe vs. Republic,** Criminal Revision No. 22 of 2014 (Dar es Salaam Registry), (Unreported) where the High Court in 2nd paragraph from the bottom at page 10 observed that as a Court of record, the High Court should interpret laws with a view to dispense justice to all. In **the Republic vs. Farid Hadi Ahmed & 21 Others,** Criminal Appeal No. 59/2015, (Dar es Salaam Registry), (Unreported) the Court of Appeal underscored that, bail applications falls in the mandate of the High Court and subordinate Courts.

In summary, Mr. Didace advocate urged, **one;** this Court to find that the charge of money laundering against the applicant as reflected in the substituted charge sheet are not supportive of the provided particulars thus this Court be pleased to strike out the charges of money laundering, **two;**

the Court to admit the applicant to bail by imposing reasonable bail conditions, **three;** the Court to impose reasonable terms of bail taking into consideration that the charges emanate from dealings of the IPTL, the company which owns IPTL Tegeta plant; the value of which exceeds the amount stated in the charge sheet and **four;** that, the applicant has strong ties in the community, he is of old age, he has no record of previous convictions or record of jumping bail and thus he cannot jump bail.

Moreover, the records show that the applicant has been cooperative to State organs whenever, wherever and for whatsoever he was needed. Mr. Didace urged this Court to exercise its powers in promoting confidence of the community by tasking powers of the DPP per **Raza Hussein Ladha & 9 Others vs. Director of Public Prosecutions** (supra).

On her part, Dr. Zainabu Mango Diwa, learned Principal State Attorney submitted that; the Republic objects grant of bail to the applicant on ground that the charges against the applicant pending at Kisutu Resident Magistrates' Court, that is; the 7th, 10th and 11th are not bailable. It was Dr. Mango's submission that the applicant's supplementary affidavit in support of the application does not focus to the application, rather, challenges powers of the DPP and has raised an aspect of defectiveness of the charge sheet which is not before this Court. It is from the unprecedented aspects the applicant's counsel invited this Court to strike out the charges of money laundering that the same have been maliciously preferred.

Dr. Mango maintained that the charge sheet has not been maliciously preferred on two grounds: **one;** though the substituted charge sheet and bail application were both filed on 03/07/2017, the respondent was unaware of the applicant's application and **two;** construction of the Anti-

Money Laundering Act (supra) is wide to cover illicit financial gains per the charge sheet which establishes sources of the laundered money, hence, the leveled charges cannot be said to have been maliciously preferred.

The learned Principal State Attorney argued that, unfortunately; the issue of assessment of the charge sheet and the raised aspect of malice have been misplaced before this Court for such mandate is vested to the trial Court in terms of section 234(1) of the Criminal Procedure Act, [CAP. 20 R.E, 2002] which is not the case before this Court as the matter has not been committed for trial. She cited the earlier cited **the Republic vs. Farid Hadi Ahmed & 21 others** (supra) where in a matter similar to the present, the Court ruled at page 15 that, such matters ought to have been reserved until when the matter is committed to the High Court for trial.

Dr. Zainabu Diwa learned Principal State Attorney maintained her stance that filing of the substituted charge did not intend to deny the applicant to be granted bail, rather; the respondent has just acted within her powers in terms of section 8 of the National Prosecutions Act and article 13 of the Constitution of the United Republic of Tanzania (supra).

In rejoinder, Mr. Didace learned advocate submitted that; though the applicant and respondent filed their respective bail application and substituted charge sheet respectively on 03/07/2017, yet; the respondent was aware of the applicant's intention to lodge the present bail application as the applicant signed the application on 28/06/2017 while confined in Segerea prison, that is, under custody of the respondent (the Republic) adding that, there was no way access to the applicant could have been possible without participation/knowledge of the respondent (Republic).

Mr. Didace disagreed with Dr. Mango that consideration and assessment of the charge sheet should be done only by the trial Court arguing that, if that is so interpreted; it means the applicant stands to stay in remand at pleasure of the Republic who is at liberty to choose at what point in time she will finalize investigation if at all hands of both this Court and of the subordinate Court are considered to have been tied.

The applicant's counsel maintained that, the money which is referred in the charge sheet to have been laundered or rather, said to be dirty; was obtained vide a High Court order by Justice Utamwa of the High Court in which the applicant was allotted his shares through IPTL as consideration.

After hearing the respective submissions by the applicant's counsel and learned Principal State Attorney on one hand and the respective affidavit, supplementary affidavit and Counter Affidavit as well as the other annexed copies in respect of the bail application under scrutiny on the other hand, the following five questions are crucial in determination of the application at hand, **one;** whether the charged offences regarding money laundering are bailable, **two;** whether this Court (meanwhile not being the trial Court as no information has been filed for the purposes of trial) is vested with powers to consider or rather assess whether the charge sheet discloses proper particulars of the charged offence of money laundering or not, **three;** whether particulars in the three charged counts of money laundering establish the charged offences, **four;** considering the above circumstances whether this Court should grant bail to the applicant and **five;** upon which conditions should the applicant be granted bail.

Starting with the first question, as correctly submitted by Dr. Zainabu Mango Diwa, learned Principal State Attorney for the respondent/Republic and Mr. Respicius Didace, the applicant's learned advocate; the charged counts of money laundering are strictly not bailable in law. This is clear in terms of section 19 of Written Laws (Miscellaneous Amendments) Act No. 2 of 2007 which amended section 148(5) of the Criminal Procedure Act, [CAP. 20 R.E, 2002] by inserting paragraph (iv) regarding money laundering contrary to the Anti–Money Laundering Act, 2006 barring grant of bail to accused persons charged with money laundering. Thus, from the above position, the first question is answered in the negative.

Going to the 2nd question as to whether this Court at present, and in the circumstances where no information has been filed for the purposes of trial, is vested with powers to assess the charge sheet to see to it whether it discloses proper particulars of the charged offence of money laundering. In the first place; with due respect to the submission by Dr. Zainabu Mango Diwa learned Principal State Attorney when making reference to section 234(1) of the Criminal Procedure Act, that powers to assess the charge sheet are vested to the trial Court, the said subsection does not at all deal with issues of assessment of charge sheets, rather it deals with duty of the trial Court when there are variances in the charges with regard to the merits of the case.

In other words, the call for intervention of the Court occurs at the hearing stage unlike at this preliminary stage where the matter is yet to be committed for trial. Moreover; the said subsection specifically refers to duty of the Court to make orders as to alteration of any material change to the

charge sheet through amendment of the charge or substitution for the sake of substantial justice. Section 234(1) of the CPA reads:-

> **"Where at any stage of a trial, it appears to the court that the charge is defective, either in substance or form, the court may make such order for alteration of the charge either by way of amendment of the charge or by substitution or addition of a new charge as the court thinks necessary to meet the circumstances of the case unless, having regard to the merits of the case, the required amendments cannot be made without injustice; and all amendments made under the provisions of this subsection shall be made upon such terms as to the court shall deem just".**

From the above, the argument by Dr. Zainabu Mango Diwa learned Principal State Attorney is with due respect without legal foundation.

Besides, as correctly submitted by the applicant's learned counsel in answering the 2nd question; though the applicant has not been committed to this Court for the purposes of trial, essentially and foremost; the fact that the involved sum in the charges exceeds one billion Tanzanian shillings (Tshs. 1,000,000,000/=), it obviously follows that the charge revolves within trial jurisdiction of this Court in terms of section 8(3) of the Written Laws (Miscellaneous Amendments) Act No. 3/2016 which repealed section 3 of the Economic and Organized Crime Control Act.

In upshot, this Court stands the trial Court when the matter is ripe for trial unless the DPP exercise his powers under section 12(3) and (4) of the Economic and Organized Crime Control Act, [CAP. 200 R.E. 2002] and issue a Certificate of transferring the matter to other Court vested with trial jurisdiction in terms of section 12(3) & (4) of the Act.

It thus follows that, this Court being vested with mandate and jurisdiction to try the offences, the same is also vested with powers to assess contents of the charge sheet to see to it whether or not it contains particulars sufficient to establish the charged offences of money laundering. But, the immediate question is, at what time this Court can exercise such jurisdiction? Can it be during the period when the matter is pending before the subordinate Court for committal proceeding before information is filed to this court?

The learned counsel for the applicant has referred this Court to several decided cases of the High Court as well as the Court of Appeal. He did so and emphasized that this court has powers to examine the correctness of the charge sheet on the counts of money laundering preferred against the applicant and as the same does not disclose the offence of money laundering, it should be struck out. With due respect to the learned counsel, all cited cases are distinguishable from the case at hand. This is because the cited decisions were given either on appeal or revision. The decisions in those cases were not given when the Courts were solely dealing with bail application.

In those cases, the Court of Appeal as well as the High Court were empowered to do so because they were asked to look at the correctness of the decisions given by Courts subordinate to them, which is not the case in the matter under scrutiny. Starting with **Raza Hussein Ladha & others vs. DPP** (supra), it was an application for revision. The Court was moved among other things to call for and revise the proceedings and orders of the

lower Court and to strike out the illegally substituted charge of murder in lieu of manslaughter.

The same application for revision applies to the cases of **Henry Kileo & others vs. R**, **Basil Peambili Mramba & another vs. R**, **Wilfred Lwakatare & another vs. R** and **Rashid Ndimbe vs. R** all cited above. On the other hand, the cases of **Hamis Ismail @ Chiga vs. R, Isidori Patrice vs. R** and **R. vs. Farid Hadi Ahmed and 21 others** were decided by the Court of Appeal on appeal. In all those cases the Courts were moved and called upon to do what they actually did. It means, they were clothed with jurisdiction to do that.

The powers of the High Court on revision is to call and examine record of the subordinate Courts for the purposes of satisfying itself as to correctness, legality or propriety of any findings, sentence or order recorded or passed and as to regularity and or correctness of any proceeding of the Court. This is provided for under section 372 of the CPA.

Mr. Didace learned counsel has asked this Court to strike out the counts of money laundering on the charge levelled against the applicant, but this is not among the orders sought by the applicant in his application. In the chamber summons, the applicant prayed for the following orders:-

> **"(i) That this court be pleased to admit the applicant on bail, and**
>
> **(ii) That the court impose reasonable conditions in Economic Crime Case No 27 of 2017 pending for committal proceedings at the Resident Magistrate Court of Dar es salaam at Kisutu."**

There is no prayer to revise the proceedings of that subordinate Court. On the basis of the application under scrutiny, this Court is

conferred with jurisdiction to entertain only the application for bail. It would have jurisdiction to examine the correctness or otherwise of the charge sheet if the applicant had been committed to this Court that is, the case is already pending before this Court for trial. At the moment, the applicant is not before this Court to answer the charges leveled against him and to prepare himself for defence. In other words, this is not the applicant's trial. As to when trial commences, the answer was given in the case of **DPP vs. Ally Nuru Dirie & Another [1988] T.L.R. 252** where the Court held:-

> **"A trial commences when accused person appears before the Court or tribunal competent to convict or acquit, and after he has been informed of the charge and required to plead".**

As the applicant is not before this Court for trial, it is premature for this Court to step in and examine correctness of the charge. It will do so at the trial. Ascertaining the correctness of the charge sheet is the very important thing before a trial commences. I must make it clear that, my reluctance to deal with what the learned counsel for the applicant has asked this Court to do is not abdication of judicial duty, but that the prayers were wrongly placed that is, they are not at the right place and at the right time. Had the learned counsel thoroughly studied the authorities he cited, he could have understood why the Court struck out the impugned counts and appreciate the point herein elucidated. For example in **Isidori Patrice vs. R** (supra) the Court of Appeal at page 14, 2nd paragraph observed:-

> **"... It is now trite law that the particulars of the offence shall disclose the essential elements or ingredients of the offence. This requirement hinges on the basic rules of Criminal law and evidence to the effect that the prosecution has to prove that the accused committed the**

actus reus of the offence charged with and the necessary mens rea. Accordingly, the particulars, in order to give the accused a fair trial in enabling him to prepare his defence. ....."

In **Henry Kileo and Others'** case at page 36, 3rd paragraph, the High Court underscored that:-

".... However, it is my considered opinion that an indictable offence is essentially a High Court case. It is in the interest of the High Court that committal proceedings are properly conducted, and correctly done. And the High Court finally receives properly and correctly done committal proceedings. In order to achieve the above the High Court has got an inherent power of revision, in committal proceedings at any stage whenever is required to do so as the need arises".

With these authorities it is plain clear that this Court can only exercise the powers asked by Mr. Didace while exercising revisional jurisdiction with regard to the committal proceedings or where the case is ripe for trial. In the case of **the Republic vs. Harry Msamire Kitilya & 2 others,** Criminal Appeal No. 124/2016, the Court of Appeal while dealing with the appeal against decision of the High Court which emanated from order of the RM's Court of Dar es Salaam at Kisutu which had struck out money laundering charges although did not specifically deal with that issue but had been referring that Court as trial Court meaning that the RM's Court at Kisutu had jurisdiction to deal with the matter regardless of the correctness or otherwise of the order given.

Given the answers in questions **one** and **two**, above, then there is no need to discuss on the remaining three questions.

There is also an issue that need to be addressed by the Court; albeit in brief. The applicant in his supplementary affidavit as well as the applicant's counsel in his submission pointed out that, the respondent was malicious in introducing the counts of money laundering in the substituted charge for the purposes of denying bail to the applicant.

In that regard, I am of the considered view that, such claim was raised prematurely for, such allegations of malice are subject to proof through evidence. It suffices just to point out at this stage that, this Court cannot address the aspect of malice as the same has to be addressed through the respective proper forum. What is at issue is whether or not the charged offences are bailable and the answer is in the negative for reasons given above. This Court therefore cannot grant bail to the applicant. The application for bail by the applicant is thus unmaintainable and consequently; it is hereby dismissed.

Order accordingly.

HIGH COURT OF TANZANIA ★ CORRUPTION AND ECONOMIC CRIMES DIVISION ★

F.N. MATOGOLO
JUDGE
30/08/2017

Right of appeal is explained.

HIGH COURT OF TANZANIA ★ CORRUPTION AND ECONOMIC CRIMES DIVISION ★

F.N. MATOGOLO
JUDGE
30/08/2017

Date: 30/08/2017.

Coram: Hon. F.N. Matogolo, J.

For Applicant: Present

Applicants: Present.

Respondent:

C/Clerk: Mr. N.C. Malela.

Dr. Zainab Mango Principal State Attorney.

I appear for the respondent/Republic

Mr. Respicius Didace Advocate

My Lord I appear for the applicants together with Cuthbert Tenga Stephano Kamala, Pascal Kamala, Chuma John and Elia John Advocates.

Dr. Zainab Mango – Principal State Attorney

My Lord the matter is for ruling we are ready.

Court: Ruling delivered.

F.N. MATOGOLO
JUDGE
30/08/2017