

TANZANIA / JUDGMENT

JAMALI SAID NANGATUKILE ruling 1

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA THE CORRUPTION AND ECONOMIC CRIMES DIVISION AT DAR ES SALAAM REGISTRY ECONOMIC CASE NO. 30527 OF 2024 THE REPUBLIC VERSUS JAMALI SAID NANGATUKILE

RULING

6th and 13th December 2024 KISANYA, J.: When this matter was called for plea taking on the 6th day of December, 2024, the Republic was represented by Mr. Edgar Bantulaki, learned Senior State Attorney assisted by Ms. Gloria Kilawe, Ms. Bupe Mwaikambo and Ms. Blandina Mnung'a, learned State Attorneys, while the accused, who was present under custody, was legally represented by Mr. Fredrick Charles, learned Advocate. Before the plea taking could commence, Mr. Batulanki rose to make a prayer to the Court. He contended that the committal proceedings were a nullity because the accused was committed to this Court under section 246 of the Criminal Procedure Act [Cap. 20, R.E. 2022] (the CPA), instead of the rule 8 of the Economic and Organised Crime Control (The Corruption and Economic Crimes Division) (Procedure) Rules, 2016, GN No. 267 of 2016 (hereafter "the CECD Rules"). In light of this, and citing the case of Makonyo John Kibuna 1 and 2 Others vs. R, Criminal Appeal No. 305 of 2018 (unreported), the learned Senior State Attorney moved the Court to nullify the committal proceedings and remit the case file to the committal court for fresh committal. In his response, Mr. Charles, raised no objection to the prayer made by the prosecution. Upon review of the record and the submissions made by the learned State Attorney, which were uncontested by the defence, the Court is tasked with determining whether the committal proceedings are a nullity and, if so, whether the Court has the power to nullify the proceedings and order the committal court to recommit the accused afresh. Addressing the first issue, the learned State Attorney contended that the committal proceedings were flawed because they were conducted under the CPA. It is important to note that section 28 of the Economic and Organized Crimes Control Act [Cap. 200, R.E. 2022] (the EOCCA) provides that the CPA applies to the procedure for arraignment, hearing, and determination of economic offences, except where Part IV of the EOCCA prescribes otherwise. Committal proceedings are specifically governed by section 30 of the EOCCA, read together with rule 8 of the CECD Rules, which was promulgated under that Act. Since section 30 falls under Part IV of the EOCCA, as referenced in section 28, and as clarified in the case of Remina Omary Abdul vs R, Criminal Appeal No. 189 of 2020 (unreported), the provisions of section 246 of the CPA, which are a replica of rule 8 of the CECD Rules, are not applicable or required in committal proceedings

for economic offences. In this case, the learned magistrate who committed the accused indicated that the provisions of section 246(2) of the CPA had been complied with after the witness statements, documentary evidence, and other exhibits were read to the accused. It was further noted that section 246(3) of the CPA was adhered to, as the accused was informed of the substance of the evidence the prosecution intended to present at trial and was given the liberty to either reserve their defense or make any relevant statements concerning the charges against them. Lastly, compliance with section 249 of the CPA was cited, as the committing magistrate informed the accused of his right to receive copies of the committal proceedings. However, it is my considered view that the citation of the provisions of the CPA in the circumstances of this case did not render the committal proceedings incurably defective or a nullity, for the following reasons: First, the fact that the accused was committed to the Corruption and Economic Crimes Division of the High Court indicates that the learned committing magistrate complied with rule 8(4) of the CECD Rules. Had the accused been committed under the CPA, the magistrate would have used the wording in section 246(2) of the CPA, committing the accused to the High Court's normal registry rather than this specialized Court. Second, the witness statements, documents, and other exhibits containing the substance of the evidence the prosecution intended to rely on during the trial were duly read to the accused as mandated under rule 8(2) of the CECD Rules. Subsequently, the magistrate informed the accused of his right to reserve his defence or make any relevant statement regarding the charges, using language consistent with rule 8(3) of the CECD Rules. Third, since the provisions of rule 8(2), (3), and (4) of the CECD Rules, which govern committal proceedings, were fully complied with, I find the magistrate's citation of an inapplicable legal provision is curable under section 4A of the CPA, as amended by section 20 of the Legal Sector Laws (Miscellaneous Amendments) Act, 2023. This provision empowers the court to prioritize substantive justice. This reasoning is further supported by the fact that neither section 30 of the EOCCA nor rule 8 of the CECD Rules expressly requires the committal court to cite the specific legal provision being adhered to when committing an accused person. 4 On the foregoing reasons, I find that the committal proceedings are not so defective as to warrant nullification, as argued by the learned State Attorney. Given that the first issue has been resolved in the negative, it becomes unnecessary to examine the second issue regarding the court's power to nullify the committal proceedings and remit the case to the committing court. Thus, I order the case to resume from the stage it had reached prior to the prosecution raising the issue addressed herein. Dated at Dar es Salaam this 13th day of December, 2024. S.E. KISANYA JUDGE 13/12/2024 5

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