

TANZANIA / JUDGMENT

DPP APPL

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF SHINYANGA AT SHINYANGA MISC. CRIMINAL APPLICATION REF. NO. 20240522000013657 DIRECTOR OF PUBLIC PROSECUTION.....APPLICANT [Application from the decision of the High Court of Tanzania in Shinyanga Sub - Registry.] (Hon. S.M. Kulita, J.) dated the 21st day of September, 2023 in Criminal Session Case No. 14 of 2022

RULING

26th & 28th June, 2024. S.M. KULITA, J. Before me is an application for forfeiture of a tainted property, to wit Tshs. 800,000/=, to the United Republic of Tanzania. It has been filed by the Applicant by way of chamber summons in terms of the provisions of sections 4(1)(a), 9(1) and 14(1) of the Proceeds of Crime Act [Cap. 256 RE 2022]. 1 In the chamber summons, the Applicant prays for this Court to order forfeiture of the tainted Tshs. 800,000/= to the United Republic of Tanzania. The application is supported by an affidavit sworn by Ms. Rose K. Wilbard on 9th May, 2024. In a nut shell, information as can be gathered from the available records is that, the United Republic of Tanzania had instituted a murder case named, Criminal Session Case No. 14 of 2022 against Salawa Ndelema, Mayala Charles @ Maregere, Shija Ngelanija @ Tembo and Emmanuel Manoni. These persons had been charged with two counts of murder, that is, killing Manyala Ndelema and Nyamizi Mserengeti. The evidence showed that, in order to facilitate the commission of these killings, Tshs. 800,000/= was paid to the killers. In proving the said Criminal Session Case, the Prosecution side tendered the said amount of money (Tshs. 800,000/=) which was admitted in court as Exhibit P7. Finally, the murder case was determined in favor of the United Republic of Tanzania, whereby the said Salawa Ndelema, Mayala Charles @ Maregere, Shija Ngelanija @ Tembo and Emmanuel Manoni were convicted of murder and sentenced to suffer death by hanging. That was on 21st September, 2023. 2 However, upon that conviction, no order concerning the said Tshs. 800,000/= was passed. Here now, is an application by the Republic, through the Director of Public Prosecution (DPP) seeking for forfeiture order against it. This Application was scheduled for ex-parte hearing on 26th June, 2024 whereas Ms. Rose Kimaro Wilbard, Learned State Attorney, appeared for the Applicant and accordingly submitted. Submitting in support of the application, the State Attorney, Ms. Rose Kimaro, firstly prayed for her affidavit to adopted and form part of her submissions. She then contended that, following

conviction of Salawa Ndelema, Mayala Charles @ Maregere, Shija Ngelanija @ Tembo and Emmanuel Manoni on two counts of murder in Criminal Session Case No. 14 of 2022, the Tshs. 800,000/= which had been used to facilitate such killings, is a tainted property, of which she prayed for the same to be forfeited to the Government of the United Republic of Tanzania. I have keenly gone through the pleadings, submissions and the records concerning the application. Accordingly, I find the issue for determination is whether the application is meritorious. The applicant moves this application under section 14(1) of The Proceeds of Crime Act. This provision sets two conditions for the court to grant forfeiture order on a property. The said conditions are; one, the one who has been found in possession of the property which is subject to forfeiture must have been convicted and two, the court must be satisfied that the said property is tainted in respect of the offence. "14.- (1) Where the Director of Public Prosecutions applies to a court for a forfeiture order under section 9 against property in respect of a person's conviction of an offence and the court is satisfied that the property is tainted property in respect of the offence, the court may if it considers it appropriate, order that the property or such of the property as it may specify in the order, be forfeited to the United Republic" Section 3 of the Proceeds of Crime Act, defines the Tainted Property, as hereunder; - "tainted property", in relation to a serious offence, means- (a) any property used in, or in connection with, the commission of the offence; Upon going through the records concerning this matter, the records reveal that, it is vivid that the United Republic of Tanzania (Republic) had instituted a murder case namely, Criminal Session Case No. 14 of 2022 against Salawa Ndelema, Mayala Charles @ Maregere, Shija Ngelanija @ Tembo and Emmanuel Manoni. They were all charged with two counts of killing the victims, Manyala Nderema and Nyamizi Mserengeti. It is also true that, in order to facilitate the commission of these killings, Tshs. 800,000/= was paid to these killers. In proving the said Criminal Session Case, the prosecution side tendered, among the other things, the said amount of money which was admitted in court as Exhibit P7. On the strength of that Exhibit P7 and others, the said case was determined in favor of the United Republic of Tanzania whereby the said Salawa Ndelema, Mayala Charles @ Maregere, Shija Ngelanija @ Tembo and Emmanuel Manoni were, on 21st September, 2023, convicted of murder and sentenced to suffer death by hanging. On that account, I am firm that, both conditions prior to forfeiture order under section 14(1) of the Proceeds of Crime Act have been met. This is because the persons who were found in possession of the said Tshs. 800,000/= have all been convicted and that the said money is what facilitated the said killings. As upon conviction, no order concerning the said Tshs. 800,000/= was made by the court, I hereby declare this application meritorious and proceed to grant it as follows; Upon the grant of this application, the cash money, Tshs. 800,000/= is hereby vested to the United Republic under section 15(1) of the Proceeds of Crime Act. I so order. S.M. KULITA JUDGE 28/06/2024 DATED at SHINYANGA this 28th day of June, 2024. S.M. KULITA JUDGE 28/06/2024 6

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