

TANZANIA / JUDGMENT

DPP VS ABDUKADRI HUSSEIN LWASSA

COURT
TANZLIIDECIDED
28 June 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA CORRUPTION AND ECONOMIC
CRIMES DIVISION AT MWANZA SUB- REGISTRY ECONOMIC APPLICATION NO. 40398 OF 2023
CASE REFERENCE NO. 20231220000040398 DIRECTOR OF PUBLIC PROSECUTIONS
..... APPLICANT VERSUS ABDUKADRI HUSSEIN LWASSA
..... RESPONDENT

RULING

25th and 28th June, 2024 KISANYA, J.: This ex-parte application is preferred under Section 38(1) of the Proceeds of Crimes Act [Cap. 256 R.E. 2022] (the PCA). It is supported by the affidavit of Oscar George, an investigation officer with the Prevention and Combating of Corruption Bureau. The applicant, the Director of Public Prosecutions, seeks the following orders from this Court:

1. A restraining order prohibiting the respondent, his agent, or any person acting on his behalf from disposing of or interfering with unregistered land with two houses erected at Kishiri B within Nyamagana District in the City and Region of Mwanza. 1
2. An order directing the Executive Director of Mwanza City Council as well as the Ward Executive Officer of Kishiri B, Nyamagana not to approve any disposition or transfer of the land/houses described in paragraph 1 hereinabove.
3. Any other reliefs that this Honourable Court deems fit and just to grant. The grounds for the sought restraint orders are detailed in the supporting affidavit of Oscar George. According to the supporting affidavit, the respondent, a Principal Technician within Transmission Department of the Tanzania Electrical Supply Company Limited (TANESCO) at Mwanza, alongside Respicius Rumanyika Rwegoshora, Thadei Mtindo Mapunda, Farisa Kassim Selemani, Milembe Paul Mchele, Theresia John Hango, and Yusta Mandiro Edward, are charged in Economic Case Number 5 of 2023 pending before the Resident Magistrates' Court of Mwanza. The offences include leading organized crime, forgery, use of documents intended to mislead the principal, embezzlement and misappropriation, money laundering, and occasioning loss to a specified authority. It is further accounted that the offences were committed between November 2021 and March 2023 when the respondent, together with his 2 accomplices, was involved in the transportation of various electrical equipment for the TANESCO Transmission Department. The applicant asserts that during this period, the

respondent and his accomplices fraudulently prepared Store Requisition Vouchers (SRV) purporting that the Transmission Department requested various items including surge lightning arrestors, isolators, drop-out fuses, plate stay bases, stay rods, section straps, assorted wires, and stay insulators, all valued at TZS 2,012,346,012.43, for servicing purposes at Ihelele and Mabuki power stations in Mwanza Region. The applicant further states that the respondent and his accomplices received various electrical requirements from the TANESCO Nyakato store in Mwanza Region, which were not used for the intended servicing purposes. It is the applicant further averment that on 18th August 2022, the respondent used part of the fraudulently obtained money to acquire unregistered land with two houses erected thereon at Kishiri B within Nyamagana District in Mwanza Region, hence this application for the aforementioned orders. When this matter was called for hearing, Mr. George Ngemela, learned State Attorney, appeared for the applicant. He appeared through a video link from the National Prosecution Service in Mwanza. 3 Upon being invited to submit in support of the application, Mr. Ngemela prayed to adopt the chamber summons, facts, and grounds deposed in the supporting affidavit and the appended documents to form his submission. He reiterated the facts averred in the supporting affidavit and implored the court to grant the restraint orders sought. Upon reviewing the pleadings and the arguments presented by the learned State Attorney, the primary issue for determination is whether the current application holds merit. Before delving into this matter, it is important to note that as per section 38(1)(a) of the PCA, referenced in the chamber summons, an ex-parte application for a restraint order may be sought against the property of an individual who is under investigation, charged with, or convicted of a serious offence. The supporting affidavit indicates that apart from being under investigation, the respondent and his associates are facing charges in the Resident Magistrates' Court of Mwanza in Economic Case No. 5 of 2023, involving offences of leading organized crime, forgery, use of documents intended to deceive, embezzlement, misappropriation, money laundering, and causing financial loss to a specified authority. All these offences qualify as serious offences under section 3 of the PCA, punishable by a minimum imprisonment 4 term of not less than 20 years. Therefore, I am satisfied that this application is appropriately brought before this Court. Turning to the matter at hand, the supporting affidavit clearly establishes that the respondent has not yet been convicted or brought before this Court, which has jurisdiction over cases involving the monetary amounts outlined in the charge sheet. Nonetheless, our records indicate that the case has already been lodged in this Court's Sub-Registry in Mwanza, registered as Economic Case No. 40197 of 2023. Given that the respondent has not been convicted, the Court may issue a restraint order against him or his property upon being convinced that there are substantial grounds to believe he committed the offence and that the property in question is either tainted or derived from the commission of the said offences. These criteria are stipulated in section 39(3) of the PCA, which states: "(3) Where the respondent has not been convicted, the court shall not issue a restraining order unless the court is satisfied that-

- (a) there are reasonable grounds to believe that the respondent committed the offence; and

(b) the property is tainted or the respondent derived benefit from the commission of the offence.” 5 In the present application, the supporting affidavit provides a detailed account of how the respondent, an employee of TANESCO, is alleged to have acquired funds or caused a loss amounting to TZS 2,012,346,012.43/=, leading to the initiation of the case in the Resident Magistrate Court and this Court. Based on the evidence deposed in the supporting affidavit, the Court has sufficient grounds to believe that an offence has been committed. However, it should be noted that the accuracy of the facts deposed therein will need to be substantiated during trial. As for the second condition, the supporting affidavit identifies unregistered land with two houses erected at Kishiri B within Nyamagana District in the City and Region of Mwanza which is subject to the restraint order. It was further duly stated how it is believed that the said property was obtained using funds acquired by the respondent subsequent to committing the offences. In light of the foregoing, I find that the application meets the requirements outlined in section 38(1) and (3) of the PCA, and therefore, it is granted. Consequently, I hereby order as follows:

1. The respondent, Abdukadri Hussein Lwassa, his agent, or any person acting on his behalf are hereby restrained from disposing of or interfering with unregistered land with two houses erected at Kishiri B within Nyamagana District in the City and Region of Mwanza. 6
2. The Executive Director of Mwanza City Council, as well as the Ward Executive Officer of Kishiri B, Nyamagana, are directed not to approve any disposition or transfer of the land and houses described in paragraph 1 herein above. It is so ordered. DATED at MWANZA this 28th day of June, 2024. S.E. KISANYA JUDGE 28/06/2024 Ruling delivered through virtual court system on this 28th day of June, 2024 in the presence of Mr. George Ngemela, learned State Attorney for the applicant and in the absence of the respondent. S.E. KISANYA JUDGE 28/06/2024 7

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/313239/source_file/DPP_VS_ABDUKADRI_HUSSEIN_LWASSA.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/director-of-public-prosecutions-v-abdukadri-hussein-lwassa-restrainingorder-tanzlii-2024>

Prepared on 12 October 2026 · Esheria