

TANZANIA / JUDGMENT

director of public prosecutions vs aneth john makame 2018 tzca 358 2 november 2018

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2 November 2018

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1 IN THE COURT OF APPEAL OF TANZANIA AT PAR ES SALAAM fCORAM: MBAROUK. J.A., MUGASHA. J.A. MWAMBEGELE. J.A.^ CRIMINAL APPEAL NO. 127 OF 2018 DIRECTOR OF PUBLIC PROSECUTIONS..... APPELLANT VERSUS ANETH JOHN MAKAME..... RESPONDENT (Appeal from the decision of the High Court of Tanzania, Corruption and Economic Crimes Division at Tanga) fKorosso, J.^ dated the 9th day of May, 2018 in Miscellaneous Economic Cause N o.1 of 2018 JUDGMENT OF THE COURT 29th October & 7th November, 2018 MBAROUK, J.A: In the District Court of Muheza at Muheza, the respondent was charged with the offence of occasioning loss to a specified authority contrary to paragraph 10(1) and (4) of the First Schedule to, and sections 57(1) and 60(2) both of the Economic and Organized Crime Control Act [Cap 200 R.E 2002]. The case is still pending before Muheza District Court in Tanga Region. 1 The background to this appeal is that, at Muheza District Court, the appellant applied for bail but the same was not granted. Thereafter, the respondent filed an application for bail under sections 29(4) (d) and 36 (1) of the Economic and Organized Crime Control Act, Cap. 200 R.E 2002 (the EOCCA) before the Corruption and Economic Crimes Division of the High Court at Tanga sub registry. At the hearing of the application before the court, the appellant raised a preliminary objection challenging the jurisdiction of the Corruption and Economic Crime Division Court to hear and determine the application. The Corruption and Economic Crimes Division of the High Court at Tanga sub registry overruled and dismissed the preliminary objection on the ground that the Corruption and Economic Crimes Division of the High Court is vested with jurisdiction to hear and determine the bail application within the purview of the EOCCA and that the High Court referred to in that section also embraces the Division of Corruption and Economic Crimes of the High Court. The appellant was aggrieved, hence this appeal. 2 In the memorandum of appeal, the appellant preferred only one ground which reads as follows: "That the Honourable Trial Judge erred in law by conclusively finding that the Economic Crimes Division o f the High Court has jurisdiction to entertain bail application brought under section 29(4) (d) o f the Organized Crimes Control Act, [Cap. 200 R.E 2002]." At the hearing of the appeal, the appellant /Director of Public Prosecutions was represented by Mr. Timon Vitalis, learned Principal State Attorney, assisted by

Mr. Saraji Iboru, learned Senior State Attorney and Ms. Jenipher Kaaya, learned State Attorney, whereas the respondent appeared in person unrepresented. Submitting on the ground of appeal, Mr. Vitalis stated that, the learned High Court judge erred when she held that, the Corruption and Economic Crimes Division of the High Court had jurisdiction to hear and determine the bail application within the purview of the EOCCA. He added that, at the trial court, the DPP filed consent and certificate directing that, the respondent Aneth 3 John Makame who is charged for contravening the provisions of paragraph 10(1) and (4) of the First Schedule to, and sections 57

- (1) and 60(2) of the EOCCA be tried in the District Court of Muheza at Muheza. He further pointed out that, as the charges facing the respondent occurred between 2162013 and 2532016 before the amendments made in the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 and as amendments came into force on 8072016 under section 12(5) of the EOCCA, the Muheza District Court is vested with full jurisdiction to hear and determine the respondent's case including bail application. He further added that, once the DPP has issued a certificate to a certain court that means such a court has full jurisdiction to entertain that case. To his opinion, the proper court for determination the respondent's bail application was Muheza District Court and since it was denied, the remedy was to file an appeal before the High Court. He therefore urged us to find that, it was improper for the respondent to file a bail application before the Economic and Organized Crime Division of the High Court. Finally, Mr Vitalis prayed for the appeal to be allowed. 4 In reply the respondent, fully agreed with the submissions of the appellant and left it to the Court to decide what is proper. Having heard the submissions made by the parties in this appeal, let us start by pointing out that, it is undisputed that the respondent is charged with the offence of occasioning loss to a specified authority currently pending in the District Court of Muheza at Muheza, Tanga Region. For the sake of easy reference, the contentious section in this appeal as submitted by Mr Vitalis is section 29(4) (d) of the EOCCA which reads as follows: "29 (4) After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purpose of this section the power to hear bail applications and grant bail (a). N/A (b). N/A
- (c) ..N/A
- (d) in all cases where the value of any property involved in the offence charged is ten millions shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court". [Emphasis added] In the first place, before the amendments vide the Written Laws (Miscellaneous Amendments) Act No 3 of 2016, determination of economic crimes cases were solely vested with the High Court sitting as an Economic Crimes Court in terms of section 3(1) of the EOCCA or by a court subordinate to the Economic Crimes Court specified and to the extent of powers conferred to the Director of Public Prosecutions or any State Attorney after issuing a Certificate in terms of section 12(5) of the EOCCA. Section 12 (5) which reads as follows: "(5) Where a certificate is issued under subsection ('3), it shall be lodged in the court concerned, and shall constitute full authority for\ and confer jurisdiction

upon, the court in which it is lodged to try the case in question. " Reverting to section 29(4) (d) of the EOCCA the situation before and after the amendments vide Act No. 3 of 2016, the High 6 Court had been vested with jurisdiction to hear and determine an application for bail in all cases where the value of any property involved in the offence charged is ten million shillings or more. In the instant case, the respondent has been charged with an economic offence of occasioning loss to Muheza District Council of Tshs. 30,273,000/=. That means, the value of the property involved in the offence charged against the respondent is more than ten million shillings. According to section 29(4) (d) of the EOCCA it is therefore our view that, as the value of the property involved in the offence charged exceeds ten million shillings, the Muheza District court has no jurisdiction to hear the bail application in the economic offence case before it. We would like to point out that, section 29(4) (d) of the EOCCA was not amended by Act No 3 of 2016, therefore, the act of not amending the said provision left the jurisdiction to hear and determine bail application which involves an economic crimes offence which is ten million shillings or more to the High Court. On the basis of the above stated reasons, we find that neither the Muheza District Court nor the Economic and Organized Crimes Division of the High Court had jurisdiction to hear and determine the respondent's application for bail. According to section 29(4) (d) of the EOCCA it is the High Court and not the Economic and Organized Crimes Division of the High Court which has been vested with the powers to deal with petition of bail in all economic offences cases where the value of any property involved is ten million shillings or more. We do not think that section 12(5) of the EOCCA is applicable in the situation in the instant case to have meant that it conferred jurisdiction upon Muheza District Court to hear and determine the respondent's bail application as Mr. Vitalis wanted us to believe. We are of the view that he wrongly interpreted section 12(5) read together with section 29(4) (d) of the EOCCA. However, on the other hand, we agree with Mr. Vitalis that the Corruption and Economic Organized Crimes Division of the High Court had no jurisdiction to entertain bail application brought in terms of section 29 (4) (d) of the EOCCA. It is our considered view that, section 29(4) (d) of the EOCCA was deliberately not amended in order to enable all High Court subregistries to entertain the related bail applications promptly instead of those applications being determined solely by the Corruption and Economic Crimes Division of the High Court. All said and done, we allow the appeal to the extent stated above. It is so ordered. DATED at DAR ES SALAAM this 2nd day of November, 2018. M. S. MBAROUK JUSTICE OF APPEAL S. E. A. MUGASHA JUSTICE OF APPEAL J. C. M. MWAMBEGELE JUSTICE OF APPEAL I certify that this is a true copy of the original. E. F. Rjssi DEPUTY REGISTRAR COURT OfUpPEAL 9

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Prepared on 14 October 2026 · Esheria