

TANZANIA / JUDGMENT

JOHN MWASI MKAMI

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TANZLIIDECIDED
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THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT (MUSOMA SUB
REGISTRY AT MUSOIW Misc. CRIMINAL APPLICATION No. 4729 OF 2025 (Arising from the
District Court of Tarime at Tarime in Preliminary Inquiry Case No. 28019 of 2024) THE DIRECTOR
OF PUBLIC PROSECUTIONS..... APPLICANT Versus

1. JOHN MWASI MKAMI
2. CHACHA MWASI MKAMI k-..... RESPONDENTS
3. NYARONYO MWITA RHOBII

RULING

12.03.2025 & 17.03.2025 Mtulya, J.: The applicant in the present application, the Director of Public Prosecutions (the applicant) has approached this court on 24th February 2025 seeking for an ex-parte order to conceal identities, whereabouts, documents and substance in statements of intended witnesses in the Preliminary Inquiry Case No. 28019 of 2024 (the case) lodged at Tarime District Court at Tarime (the district court) for security reasons. On 12th March 2025, the applicant had marshalled Ms. Dotto Banga, learned State Attorney, to argue the application on his behalf. In her submission, Ms. Banga had registered a bundle of relevant materials in backing the move, but in brief the main reason in support of the application is that the intended witnesses are at risk due to threat and intimidation produced by the respondents, respondent's relatives and respondents' criminal syndicates. According to Ms. Banga, the respondents are alleged to have committed murder and investigation against them was completed to the finality and the applicant intends to file information in this court in order to arraign the respondents into trial to reply the information. However, it was learned by the applicant and Regional Crimes Officer of Tarime/Rorya Police Special Zone, SP. Petro Maskamo, that the intended witnesses are in danger from threats imposed by the respondents and their associates. It is from the threats and perils against the intended witnesses, in the opinion Ms. Banga, that the intended witnesses have shown an interest to decline appearance during hearing of the case for safety reasons. In order to persuade this court to grant the application, Ms. Banga had cited and explained a bunch of statutory provisions enacted in the Criminal Procedure Act [Cap. 20 R.E. 2022] (the Act) and a precedent in The Director of Public Prosecutions v. Abdi Sharif Hassan @ Msomali & Another, Misc. Criminal Application No. 19 of 2020. In the Act, Ms. Banga cited the provisions of sections 188 (1) (a) (b) (c)

& (d) and 188 (2) and 392A (1) arguing that the law allows non-disclosure of necessary materials in support of the criminal case, despite the rights enacted in section 245 of the Act on 2 want of display of relevant substance and exhibits of the case during filing of information in this court. In her opinion, the requirements in section 245 of the Act, if followed blindly, in cases like the instant one, witnesses will be at peril and may not appear for testimonies hence this court may miss eyes and hears in the case. Finally, Ms. Banga had prayed this court to grant the application for interest of justice and good quality of decision in the intended case. I have perused the record of the instant application, enactment of sections 188 (1) (a) (b) (c) 8i (d) and 188 (2), 245 and 392A (1) of the Act and a multiple of precedents of this court in *The Director of Public Prosecutions v. Abdi Sharif Hassan @ Msomali & Another* (supra); *The Director of Public Prosecutions v. Farid Ahmed & 35 Others*, Misc. Criminal Application No.145 of 2020; *The Director of Public Prosecutions v. Majaliwa Mohamed Ngarama*, Misc. Criminal Application No. 9 of 2022; and *The Director of Public Prosecutions v. Yahya Twahiru M pemba & 12 Others*, Misc. Criminal Application No. 22 of 2022. The record shows that the application was preferred under sections 188 (1) (a) (b) (c) & (d), 188 (2), 245, 246 (2) and 392A (1) of the Act, which permit the applicant to register an application before filing information or at any stage of proceedings, to seek for protection of intended witnesses in criminal cases. I am aware of the enactment of section 246 (2) of the Act on want of substance of evidence of witnesses and fair trial. However, in the circumstances, like the present case, the generally accepted statement is that found in the indicated precedents that: concealment of identities of intended witnesses is necessary in a free and democratic society in order to protect vulnerable witnesses. In my considered opinion, the measure prayed by the applicant is necessary, justifiable and does not violate the principles of fair hearing of criminal cases. Having said so, this court cannot be detained for further interpolations on the subject. Ms. Banga has persuaded this court to grant the application in favour of the applicant, as I hereby do so. In the end I issue the following orders for security reasons, viz'. First, non-disclosure of identities and locations of the intended witnesses in the case at the district court and this court during preliminary hearing and hearing of the case; Second, non-disclosure of statements and documents likely to lead to identification of the intended / witnesses in the case at the district court and this court during preliminary hearing and hearing of the case; Third, where necessary, during hearing of the matter, the proceedings shall be conducted in camera and witnesses' testimonies be produced via video conference; 4 Fourth, during trial the accused persons shall be supplied with brief facts of the case constituting the substance of evidence intended to be relied by the applicant, but without any trace of the identities or location of the intended witnesses; and Fifth, owing to the nature of the case and setting of our courts, the trial judge shall have a total control on how the indicated orders shall be complied and where necessary direct appropriate steps in favour of the protection of witnesses' identities, their location and any material which will likely lead to the identification of witnesses. court in the presence of the applicant's learned State Attorney, Mr. Davis Katesigwa and in absence of the respondents. Judge 17.03.2025

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