

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB
REGISTRY AT DAR ES SALAAM MISC. CRIMINAL APPLICATION NO. 5569 OF 2025 (Originating
from PI No. 202503042000005447 of 2025 in the Resident Magistrate's Court of Dar es Salaam
Region at Kisutu)

DIRECTOR OF PUBLIC PROSECUTIONS.....APPLICANT VERSUS OMARI ABDULLA
MAKOTA.....1ST RESPONDENT RAJABU ALLY MOHAMED
ULATULE.....2ND RESPONDENT RAMADHANI HAMIS ULATULE.....3RD
RESPONDENT FADHIL SHABAN LUKWEMBE.....4TH RESPONDENT ALLY
MOHAMED SALUM USO WA SIMBA @ ULATULE.....5TH
RESPONDENT KHAMIS MOHAMED SALUM USO WA SIMBA @
ULATULE.....6TH RESPONDENT NASSORO SELEMAN ABDALA
ULATULE7TH RESPONDENT SELEMAN ABDALA SALUM USO WA SIMBA @
ULATULE.....8TH RESPONDENT SAID ABDULLAH
CHAMBETA@ MZEE WA FASTA9TH RESPONDENT HAMIS ALLY
MASAMBA.....10TH RESPONDENT MOHAMED HASSAN
UNGANDO.....11TH RESPONDENT ABDALLA BUSHIRI SAID KALUPULA.....
12TH RESPONDENT MNEMO KASSIM MWATUMBO.....13TH RESPONDENT 1

RULING

Date of last order: 11th March 2025 Date of Ruling: 17th March 2025 MTEMBWA, J.: Under section 34(3) of the Prevention of Terrorism Act No 21 of 2002, read together with section 188 (1) (a), (b), (c), (d) and (2) of the Criminal Procedure Act, Cap 20 R.E 2022, the Applicant is seeking for an exparte order to conceal or of non- disclosure of the identities and addresses or whereabouts of the Republic witnesses for security reasons during committal in respect to PI No. 202503042000005447 of 2025 in the Resident Magistrate's Court of Dar es Salaam at Kisutu and during trial by this Court. In view of an order requested for, this Court be pleased, in addition, to issue orders of non-disclosure of the statements and documents likely to lead to the identification of Republic witnesses or their whereabouts and that the proceedings be conducted in camera. The Application was brought under a certificate of urgency and is supported by the Affidavits of Ms. Ashura Mnzava, the learned senior state attorney, and ASP Fautine Mafwele, the Zonal

Crimes Officer of Dar es Salaam Region. As discerned from the two Affidavits supporting the Application, 2 on 12th July 2015, Stakishari Police Station within Ilala District in Dar es Salaam Region was invaded by a large group of organized persons armed with military firearms. During the invasion, police officers and other civilians were shot dead, including D. 6952 SGT ADAM NYAMHANGA RYوبا, E. 1279 D/CPL PETER MNDAMSHINA SABUNI, E. 3962 CPL GAUDIN, and G. 3010 PC ANTHONY LEONARD KOMU, who died instantly, whereas two others (names withheld), although seriously injured, survived the attack. The civilians killed by gunshots included JACKLINE WILLIAM DUMA, ERICK WANGANOU MI SWAI and SALEHE SIMKOKO. The Affidavits further reveal that, the attackers also robbed twenty firearms, namely eleven submachine guns with registration numbers TZPL6711, 6716, 6722, 6717, 6725, 6784, 6785, 6787, 6793, 6794 and 67841, nine Semi-Automatic Rifles with registration numbers TZPL6748 6754, 6755, 6756, 6757, 6758, 6759, 6766, 6772 and 90 rounds of ammunition. After the incident, an investigation was launched, and in the end, it was revealed that the perpetrators were hiding at Ulatule Mosque within MKuranga District in the Coast Region. Further investigation led to the arrest of the Respondents. It is alleged further that the Respondents' acts aimed at seriously 3 destabilizing the fundamental political, constitutional, economic, and social structure of the United Republic of Tanzania. Some of the Respondents' associates are still at large, and efforts to arrest and bring them to justice are underway. According to FAUSTINE MAFWELE ACP, the Respondents, acting in collaboration with their associates who are still at large in various parts of the United Republic of Tanzania, are attempting to get the identities of the intended prosecution witnesses to stop them from testifying in Court against the Respondents during trial. It was revealed further that the Respondents' allies, who are still at large, murdered one of the prosecution witnesses, namely MG 472454 MUSSA KOTI, at Mamdikongo village in Mkuranga District immediately after giving his statement to the Police against the Respondents. Based on the above, the deponents believe that, given the sensitivity and seriousness of the charges against the Respondents and the fact that their allies are still at large, the disclosure of the identities of the intended prosecution witnesses during committal and trial will expose them and their families to extreme danger. During hearing, Mr. Nassoro Katuga, the learned principal state attorney, and Mr. Harrison Lukosi, the learned state attorney, 4 appeared for the DPP. Mr. Lukosi's submissions were a replica of the information in the Affidavits as expounded above. I will thus not reproduce them here. It suffices here to note that I have considered them. Having considered the application and the submissions by the learned state attorney, the question is whether the orders requested for are worth considering. Indeed, section 34(3) of the Prevention of Terrorism Act (supra) provides as follows;

- (3) A Court may, on motion by or on behalf of the Director of Public Prosecutions, order that no person shall publish-
- (a) the name, address or photograph of any witness in any case tried or about to be tried for any offense under this Act; or

- (b) any evidence or any other matter likely to lead to the identification of the witness. Section 188 (1) (a), (b), (c), (d) and (2) of the Criminal Procedure Act (supra) is more elaborative, and I quote in verbatim;
- (1) Notwithstanding any other written law, before filing a charge or information, or at any stage of the proceedings under this Act, the court may, upon an ex parte application by the Director of Public Prosecutions, order-
 - (a) a witness testimony to be given through video conferencing in accordance with the provision of the Evidence Act; 5
 - (b) non-disclosure or limitation as to the identity and whereabouts of a witness, taking into account the security of a witness;
 - (c) non-disclosure of statements or documents likely to lead to the identification of a witness; or
 - (d) any other protection measure as the court may consider appropriate.
- (2) Where the court orders for protection measures under paragraph (b) and (c) of subsection (1), relevant witness statements or documents shall not be disclosed to the accused during committal or trial. From the above provisions of the law, on Application for and on behalf of the DPP, having satisfied with the reasons advanced, the Court may order the non-disclosure of the prosecution witnesses. The concealment may include non-disclosure of the name, address, or photograph of any witness in any case tried or about to be tried for any offense or any evidence or any other matter likely to lead to the identification of the witness. In any case, the Court will direct its mind towards the safety of the intended prosecution witnesses. The justification and scope of the witness protection were discussed in the Indian case of Mahender Chawla and others vs Union of India and others, Criminal Original Jurisdiction Writ Petition (Criminal) No. 156 of 2016, Supreme Court of India. 6 The Court stressed as follows; The ability of a witness to give testimony in a judicial setting or to cooperate with law enforcement and investigations without fear of intimidation or reprisal is essential in maintaining the rule of law. The objective of this Scheme is to ensure that the investigation, prosecution and trial of criminal offences is not prejudiced because witnesses are intimidated or frightened to give evidence without protection from violent or other criminal recrimination. It aims to promote law enforcement by facilitating the protection of persons who are involved directly or indirectly in providing assistance to criminal law enforcement agencies and overall administration of Justice. Witnesses need to be given the confidence to come forward to assist law enforcement and Judicial Authority with full assurance of safety. It is aimed to identify series of measures that may be adopted to safeguard witnesses and their family members from intimidation and threats against their lives, reputation and property. The High Court of Kenya at Meru in Republic vs. Doyo Galgalo, Criminal Case No. 160 of 2019, had this to say; One of the major considerations in granting protection order is where the life or safety of the person may be endangered as a result of his being a witness. Therefore, the protection of witnesses entails inter alia safety of the witness. From the prescriptions and the words used in the constitution and the law, the concealment of the

identity of a witness is necessary, in a free and democratic society, to protect witnesses or 7 vulnerable persons, it is a justified measure, and therefore, not a violation to a fair trial. In our jurisdiction, section 34 (3) of the Prevention of Terrorism Act permits the Court to issue such orders in the manner stated in section 188 of the CPA. This section allows the Court to issue orders that dispense with the disclosure requirement when there is probable risk and danger to the lives of the intended witnesses or their families following the prosecution's ex-parte Application. This Court in the case of DPP vs. Said Adam Said & 10 others, Misc. Criminal Application No. 94 of 2019, Hon. Siyan, J. underscored the importance of witness protection and issued an order for the protection of witnesses and ordered the non-disclosure of statements likely to identify the witnesses during committal proceedings. Similarly, in DPP vs. Abdi Sharif Hassan @ Mosmal & Another, Misc. Criminal Application No. 19/2020, Hon. Tiganga, J also underscored the importance of witness protection and issued a protection order (See also DPP vs. Fundi Hamis Kamaka @ Mohamed Fundi and 4 others, High Court of Tanzania at Dar es Salaam and DPP vs. Majaliwa Mohamed Ngarama and 20 8 others, in Misc. Criminal Application No 9 of 2022, High Court of Tanzania at Morogoro). According to the two Affidavits supporting the Application, the Respondents and their allies, who are still at large in various parts of the United Republic of Tanzania, are attempting to get the identities of the intended prosecution witnesses to stop them from testifying in Court during trial. It was deposed further that the Respondents' associates, who are still at large, murdered one of the prosecution witnesses, namely MG 472454 MUSSA KOTI, at Mamdikongo village in Mkuranga District immediately after giving his statement to the Police against the Respondents. These reasons sound valid to me. As underscored above, lawyers and judicial officers have never considered the non-disclosure of the witnesses' identities or any evidence or other matter likely to lead to the witnesses' identification as an impediment to a fair trial. It is regarded as a way to let the witness testify freely on what he or she knows without being intimidated or threatened by internal or external forces. It is a judicial remedy aimed at protecting the witness and his or her close friends or relatives. Given the Affidavits and submissions by the learned state 9 attorney, I hereby allow the Application. In effect, I order as follows;

1. The identities of the intended prosecution witnesses in PI No. 202503042000005447 of 2025 in the Resident Magistrate's Court of Dar es Salaam at Kisutu be withheld, including their names, addresses, or whereabouts, during committal proceedings and trial.
2. During trial, the proceedings shall be conducted in camera, as shall be conveniently directed by the presiding Honourable Judge.
3. The National Prosecution Services should arrange to make a thorough examination or assessment and screen all the witness statements and documents to eliminate and delete all names, particulars, or any fact that, on the face of it, will likely lead to the identity of witnesses before the same are read over during committal proceedings.

4. In the alternative to (3) above and in a bid to have a fair trial, the National Prosecution Services to prepare a comprehensive summary of detailed facts without disclosing identities and whereabouts of witnesses, which will enable the Respondents 10 (accused persons) to know the gist and substance of the prosecution evidence.
5. During committal proceedings and or trial, no dissemination and or publication of any documentary evidence or any other testimony bearing the identity of a prosecution witness is allowed without prior leave of the Court. Further, it is prohibited to disseminate or publish any information likely to disclose the prosecution witnesses' location, residence, and whereabouts and any of their relatives or close friends. I order accordingly. DATED at DAR ES SALAAM this 17th March 2025. H.S. MTEMBWA JUDGE 11

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