

TANZANIA / JUDGMENT

## 20171214 TZHC Arusha

COURT  
TZHCDECIDED  
14 December 2017

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

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (IN THE DISTRICT REGISTRY)  
AT ARUSHA CONSOLIDATED MISC- CRIMINAL APPLICATIONS NO. 97 OF 2017 AND MISC-  
CRIMINAL APPLICATION NO. 99 OF 2017 (Originating from Resident's Magistrate's Court of  
Arusha Economic Case No. 99 of 20F)

1. NASSORRO MESHACK DAUDI @ BABA DAUDI @ NASSORO JUMA KALIMILWA .....  
~ ..... 1 APPLICANT 51
2. MARTIN S/O SILVANO KIANGO ..... 2ND APPLICANT
3. NEEMA ALLY JUU YA WATU @ MAMA MUSTAPHA ..... i ..... 3Ro APPLICANT  
VERSUS ' THE REPUBLIC ... II ■■■■ ... I II ■ III ■■■■■■ II ■■ i ■ ■■■■■■ II ■ .... III ■ ..  
RESPONDENT I RULING · Date of last order: 06/12/2017 Date of Ruling: 14/12/2017 BEFORE:  
HON. S.C. MOSHI, J This Ruling is in respect of consolidated applications which are Misc.  
Criminal Applications No 97/2017 and Misc. Criminal Application No. I 99/2017. The  
applicants filed both applications for bail pending final hearing and determination of  
economic case No 99 of 2017 in the Resident Magistrates' Court of Arusha at Arusha. The  
application has been made under section 29 (4) (d) and section 36 (1) of the Economic and  
Organized Crimes Control Act, Cap 200 RE 2002. 1 I When the application came up for  
hearing the applicants were represented by Mr. Mgalula learned advocate while the  
respondent/Republic was represented by MR. Felix Kwetukia learned State Attorney. Mr.  
Kwetukia learned State Attorney started by addressing the court that, the Director of Public  
Prosecution (DPP) has filed a certificate under Section 36 (2) of the Economic and Organized  
Crimes Control Act, Cap 200 praying the Court not to grant bail to the accused persons  
because safety and interest of the Public would be prejudiced. He said that, effect of filling  
the DPP certificate is provided under Sub Section 3. It remains in effect until the  
proceedings concerned are concluded or the DPP withdraws it. Therefore on that ground,  
the accused may be released only when the proceedings ends or when the certificate is filed.  
He prayed that the application should be dismissed. Opposing the DPP's certificate and the  
submission by the learned State Attorney, Mr. Mgalula submitted that the said two  
certificates of the DPP haven't stated how the public interest will be jeopardized. He said that  
filing a certificate without substantiating the basis as why they deny bail is 'tantamount to  
curtailing applicant's basic rights and denouncing the presumption of innocence. He was of

the view that, they expected the Republic to show how the public interest is jeopardized. He went on submitting that, Personal freedom is basic right of every citizen as provided for in Article 15 of the Constitution of United Republic of Tanzania. The Applicants are only suspects. The trial has not started. Even 2 investigation is not complete. Denying them bail is against Human Rights. He stated further that, also the certificate is an afterthought. If the state had intended to oppose bail they should have done so at the subordinate Court. He prayed that the Court grant bail basing on the stated reasons. In his rejoinder Mr. Kwetukia submitted that, Section 36 (2) of Cap 200 doesn't require the OPP to explain the Public interest. The law does not require the OPP to give reasons. Regarding presumption of innocence, he said that the argument is irrelevant. The DPP does not oppose all bail applications. Concerning contravention of Art 15 of the Constitution and denial of Basic Rights; he said that this is not a Constitutional matter. There's specific procedure for that. Concerning the argument that the DPP did not file the certificate in the subordinate Court; the learned State Attorney said that, Section 29( 4)

- (d) of Cap 20 gives powers to High Court to hear Bail applications whose subject matter or amount involved exceeds Tshs. 10 million. Hence, the application couldn't be determined by subordinate Court; that follows that the DPP cannot file certificate in subordinate Court. So the OPP files a certificate after an application has been filed. He therefore prayed the Court to dismiss the application. I have considered the submissions of both parties. There is no dispute that the OPP Filed the certificate under section 36 (2) of the Economic and Organized Crime Control Act, Cap 200 to the effect that the accused persons who are the applicants namely; NASSORO MESHACK 3 . DAUDI @ BABA DAUDI @ NASSORO JUMA KALIMILWA, MARTINI SILVANO KIANGO and NEEMA ALLY JUU YA WATU @ MAMA MUSTAFA should not be granted bail on the ground that the safety and interest of the ~epublic will be prejudiced. In his submission the counsel for the applicants submitted that ,the DPP had acted in bad faith by filling a Certificate of denying· bail to the appellant as he did not even give reasons how would the public interest be jeopardized. This issue need not detain me as in accordance to the construction of the provision of section 36 (2) of the Economic and Organized Crimes Control Act, when the certificate is filed before the court denying bail to the accused the court's hands are tied, according to that section, it is enough for the DPP to state in writing that it is likely that the interest of the Republic would be prejudiced. ·The law does not require the DPP to give reasons why he thinks that interest of the Republic would be prejudiced. Therefore, the applicant's counsel misdirected himself when he needed the DPP to give reasons in the certificate denying bail. In the case of Ally Nuru Dirie & Another [1988] TLR 252 Court stated the tests which should be met for a valid DPP's certificate, which are;
- (i) The DPP must certify in writing and (ii) The certificate must be to the effect that the safety or interesting (sic) of the United Republic are likely to be prejudiced by granting bail in the case/ and (iii) The Certificate must relate to a criminal case either pending trial or pending appeal. 4 The holding in the case of Dirie (supra) was quoted in, approval by the Court of Appeal in the case of The OPP vs. Li Ling Ling, Criminal Appeal No. 508 of 2015

(unreported). Thus, the DPP's certificate denying bail must only meet the above tests, and since the certificate filed by the DPP in this case met the above tests I find that my hands are tied, I cannot grant the application. In the upshot the applicants application lacks merit the same is dismissed. s.c.£. JUDGE 14/12/2017 5

---

### 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/335385/source\\_file/b7be3a1ee8a0219f/20171214\\_TZHC\\_Arusha.pdf](https://media.tanzlii.org/media/judgment/335385/source_file/b7be3a1ee8a0219f/20171214_TZHC_Arusha.pdf)

**CASE PAGE**              <https://chat.esheria.ai/case-law/tanzania/nassorro-meshack-daudi-baba-daudi-nassoro-juma-kalimilwa-v-the-republic-Bail-tzhc-2017--6a3ea5293b1caa91298210a8>

Prepared on 14 October 2026 · Esheria