

TANZANIA / JUDGMENT

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29 March 2017

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'_.-~ \~/, I • ,,,. - •. IN THE HIGH COURT OF TANZANIA CORRUPTION AND ECONOMIC CRIMES DIVISION AT DAR ES SALAAM MISC. ECONOMIC CAUSE NO. 6 OF 2017 (Originating from Economic Crimes Case No.6 of 2017: Court of Resident Magistrate of Dar es Salaam at Kisutu) RAJESH TUMULURI. 1 5 T APPLICANT SHANMYGA RAJESH WARAN 2ND APPLICANT VERSUS THE REPUBLIC RESPONDENT

RULING

Korosso, J.: The Ruling relates to an application filed before this Court under a certificate of urgency filed via a chamber summon supported by an affidavit affirmed by Rajesh Tumuluri and Shanmuga Rajesh Waran the applicants pursuant to section 29(4)(d) and 36(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2002. The applicants sought for the Court to grant bail to the Applicants with respect of Economic Crimes 1, Case No. 8 of 2017 instituted and pending committal proceedings at the Resident Magistrate's Court of Dar es Salaam at Kisutu. Also subject to being granted bail for the Court to impose reasonable bail terms and conditions to the applicants and any other relief(s) this Court may deem fit and just to grant. It is important to state at this stage that the applicants are jointly charged with one count of being in unlawful possession of Government Trophies contrary to section 86(1), (2)(c)(ii) and (3) of the Wildlife Conservation Act, No. 5 of 2009 read together with Paragraph 14(d) of the First Schedule to, and Section 57(1) of the Economic and Organized Crime Control Act, [Cap 200 RE 2002] hereinafter referred to as EOCCA. The estimated value of the trophies alleged to be US \$75000.0 equivalent to Tshs. 163,585,500/- . The Respondents on the 22nd of March 2017 duly filed a counter affidavit in compliance with the orders of this Court dated 20th of March 2017. It has come to the Court knowledge that the said Counter affidavit was served on the applicants on the 23rd of March 2017 as submitted in Court by counsel for the applicants Mr. Michael Ngalo, Learned Advocate and the said averment conceded by Mr. Elizabeth Mkunde learned State Attorney. The applicants counsel had also stated that the lateness in service of the counter affidavit led them to fail to file a reply within the time prescribed by the Court. It should be noted that upon being asked whether the applicants need expanded time to file a reply, the counsel for the applicants informed the Court that they did not need extra time and that they do not intend to file a reply. Suffice to say, before the start of hearing of this application, in the morning of 24th March 2017 the Respondents filed a Certificate issued by the Director of Public Prosecutions made under section 36(2) of the Economic and Organized Crime Control Act Cap

200 stating that the DPP certifies that Rajesh Tumuluri and ShanMuga Rajesh W aran (the 1st and 2nd applicants) should not be granted bail on the ground that the safety and interests of the Republic will be prejudiced. It was considered by both the counsels for the applicants and the Respondent Republic that the said certificate was served to the applicants early that morning, that is, just before the matter was set for hearing. The applicants counsel therefore, upon service of the Certificate by the DPP advancing that bail should not be granted to the applicants so as not to prejudice the safety and interests of the Republic implored this Court to disregard the said Certificate and proceed to hear the application for bail pending committal proceedings before the Court. The counsel for the applicants advanced two main points why he prayed for the Court not to consider the Certificate by the DPP arguing that it intends to circumvent, due process of the Court. The first point being that the DPP's certificate was an afterthought because when one looks at the counter affidavit, the respondents are noting most of the applicant's affidavit averments showing nowhere any intention to object to the bail application. The applicants second argument being that whilst acknowledging the fact that the DPP is empowered to issue the certificate objecting to grant of bail to applicants under section 36(2) of the EOCCA Cap 200 RE 2002, they are questioning the timing and motive for issuance of the said Certificate, arguing that it is unprecedented and unprocedural to file a counter affidavit and then use another process to block the Court to deal with a matter. That such an act shows bad faith and if the Court takes cognizance of the DPP's Certificate it will be an act of succumbing to the DPP's machinations. That the fact that the respondent have not expounded on what interests of the Republic will be prejudiced is an act of bad faith. That the act of delaying to file the Certificate seriously prejudiced the applicants' rights. The other issue raised by the applicants was questioning of the validity of the Certificate in view of the contents of the counter affidavit filed by the respondents just a day prior to filing the Certificate by the DPP objecting to the grant of bail to the applicants. 4 J ' The learned State Attorney who represented the Respondent Republic as alluded to hereinbefore conceded the fact that the counter affidavit filed did not reveal that the DPP was to file the Certificate objecting to grant of bail and submitted that despite this fact the Certificate is valid since it was filed within the confines of law that is section 36(2) of the EOCCA Cap 200 RE 2002. The counsel further argued that the law does not clarify nor define when it, should be given and thus they contended the timing for which the DPP's Certificate was filed cannot be challenged and that by the holding in the case of DPP vs. Li Ling Ling, Criminal Appeal No. 508 of 2015 (CAT, at Dar es Salaam) on conditions of validity of the DPP's Certificate and that since they were complied with they can also not be challenged. Therefore after going through the submissions by the learned counsels for the applicants and the Respondent Republic before this Court for consideration and determination at this juncture is the validity, status and impact of the DPP's Certificate objecting to the granting of bail for the 1st and 2nd applicants. Looking at the records before the Court, it is clear that the counter affidavit filed by the Respondent Republic on the 22nd of March 2017 from paragraph acknowledge the charges facing the applicants and the fact that they have yet to be committed to the High Court and notes the content of the applicants affidavit, that is paragraph 3, 4, 5, 6, 7, 8, 5

----- 9, 10 and 11. It also acknowledges the fact that the offence for which the applicants are charged with are serious and carry severe punishment that includes a long custodial sentence. But as argued by the applicants there is nothing relating to objection to the bail application. It is also clear upon consideration of section 36(2) of the EOCCA Cap 200 RE 2002 reads: 36(2) "Notwithstanding anything in this section contained no person shall be admitted to bail pending trial, if the Director of Public Prosecutions certifies that it is likely that the safety or interests of the Republic would thereby be prejudiced" The issue of the validity of the Certificate of the DPP has been discussed in various cases and recently in the case of DPP vs. Li Ling Ling (supra). In that case Li Ling Ling and four other persons were jointly charged with 1- I four counts~ the - third , count being unlawful dealing in Government trophies total value being 267,401,400/-. The DPP tendered a certificate under section 36(2) of EOCCA objecting to the grant of bail to the respondent on ground that release of bail would likely prejudice the interests of the Republic. The holding of the Court of Appeal was that under section 36(2) of the EOCCA any Court with jurisdiction to entertain and grant bail in an economic crime case. The DPP is empowered to file a 6 certificate in any court which has jurisdiction to hear and determine an application for bail. That the DPP can only file the Certificate when the case is pending trial. We considered the holding in the case of. Ally, Nuru Dirie and Another

[1988] TLR 2002 embraced in the case of DPP vs. Li Ling Ling (supra), that once the DPP's certificate has met a validity test then the Court shall not grant bail. The conditions for validity of DPP's certificate are that: "i. The DPP must certify in writing and zz. The Certificate must be to the effect that the safety or interests of the United Republic are likely to be prejudiced by granting bail in the case; and zu. The certificate must relate to a criminal case either pending trial or ending appeal" Having considered the law and the authorities before me and applying the said test in Ally Nuru Dirie and Another (supra) adopted in DPP vs. Li Ling Ling (supra) to the present matter, there is no doubt that the DPP's Certificate filed in this Court augurs well in all the aspects specified in the validity test on all of the three conditions outlined hereinabove. The said conditions do not relate to the time such a Certificate is filed. Though it is true that a parties must stand and be guided by their pleadings, it is clear 7 taking a purposive interpretation of section 36(2) of the EOCCA, any previous stance or position does not invalidate the DPP's Certificate once filed. Therefore from for the above reasons there is no doubt that the DPP's Certificate filed in this matter is valid. Having said that, it is important to remember that having regard to the peculiar circumstances of this case, and going back to the principle governing granting of bail pending trial being a fundamental right and grounded by the presumption of innocence is a privilege of every accused person .. It is also well grounded that the object of bail is to secure the appearance of the accused person at his trial. It is also pertinent to understand that in the present case as averred in their affidavit supporting the application; the applicants were originally granted bail by this Court in . respect of Economic Crime Case No. 62 of 2016, a case which was later withdrawn on the 28 th February 2017 charges which we are told were 1 1 similar. From:the evidence before

the Court .there 'is nothing stated that . from the time the applicants were granted bail from the 29 th of December 2016 to the time of the applicants arrest on the 28 th February 2017 when new charges were filed, there being evidence of their absconding or disappearance. 8 • r• I The above being the facts which cannot be restated, and acknowledging the fact that the DPP is not required to expound on the circumstances leading him to certify that granting of bail will prejudice the safety and interest of the Republic, but understanding that in exercising his discretion the DPP is guided by the three principles enshrined in the National Prosecution Service Act, No. 1 of 2008, section 8 states: "In the exercise of powers and performance of his functions, Director shall observe the following principles-

- (a) the need to do justice;
- (b) the need to prevent abuse of legal process; and
- (c) the public interest. This being the case, and considering the principles enshrined therein in this provision, it is important for a Court in justice dispensation such as making determination especially related to the liberty of the individuals to at all times strive to balance greater public interest while doing justice in the substance case with temporal issue of liberty of the applicant(s). Therefore having found that the DPP's certificate cannot be challenged in terms of its validity, and at the same time considering the circumstances in this case, where originally there was grant of bail in a case involving the same parties, and similar charges and the fact that, while the applicants were out on bail there is no evidence that they had infringed the bail conditions, we find it important to provide a time for the DPP to review and satisfy himself on the whether there are obtaining matters especially in areas considered prejudicial to safety and interest of the Republic that warrant the continuance of existence of the DPP's Certificate that objects to grant of bail to applicants, after the period provided by the court in the interest of justice. It is expected that the time provided by the Court will at the same time afford another opportunity for the applicants to be heard on their application for bail on merit and in effect facilitating application of due process of law. Consequently this Court having found that the validity and competency of the DPP's Certificate objecting to bail is not in doubt, upon reasons stated hereinabove cannot proceed to grant bail and in the interests of justice therefore defers the determination of the bail application so as to provide time for DPP's further consideration on the viability of the certificate objecting to grant of bail. Hearing 28 th of April 2017. Winfrida B. Korosso JUDGE 29 th March 2017 10 j;_ !:-. I.I : Ruling delivered in chambers this day in the presence of Mr. Kweka learned Principal State Attorney assisted by Ms. Sumawe State Attorney for the Respondent Republic and Mr. Ndusyepo learned Advocate for the applicants and the 1st and 2 nd applicants . ~ . Winfrida B. Korosso JUDGE 29 th March 2017 I . I\ 11

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Prepared on 14 October 2026 · Esheria