

TANZANIA / JUDGMENT

20171002 TZCA Dar es Salaam

COURT
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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM THE CORRUPTION AND ECONOMIC
CRIMES DIVISION DAR ES SALAAM REGISTRY ECONOMIC CASE NO. 01 OF 2017 (Originating
from Economic Case No. 35 of 2015 in the Resident Magistrate's Court of Dar es Salaam at Kisutu)

1. RAYMOND DOLF LOUIS
2. KHALID YUSUPH HASSAN
3. HARUNI LYSON MPANDE
4. KHAMIS ALLY OMARY APPLICANTS
5. BENSON VITALIS MALEMBO
6. DAVID FAUSTINE CHIMOMO
7. SAFINA KASSIM RUPIA VERSUS THE REPUBLIC
RESPONDENT

RULING

28/9 & 2/10/2017 Hon. W.B. Korosso, J. On the day fixed for plea taking and preliminary hearing, the Court invited parties to address it on whether from the records before it the committal proceedings were properly conducted. The counsels for the Republic and those representing the accused persons were all of the view that the committal proceedings Page 1 of 6 I • -, conducted at the Resident Magistrate Court of Dar es Salaam were a ' nullity for failure to be conducted under proper and mandatory legal provisions. That is by virtue of Section 28 and Section 30 of the Economic Crimes Control Act Cap.200 R.E.2002, bearing in mind the fact that there were established Rules on how to conduct committal proceedings related to Economic Offences. It was their prayer that committal proceedings be found a nullity, Having considered the submissions by both parties, and having perused the records of the committal proceedings, on the 9/08/2017 before Hon. S.I Shaidi PRM the information filed was read to all the seven accused persons and they were informed they were not to enter pleas because it was not their trial. Thereafter statements of all expected witnesses for the prosecution were read over, and also the substance of all documents to be relied by the prosecution and the Court declared that Section 246(2) of CPA Cap.20 R.E2002 to have been complied with. Also Section 246(5) and (6) were recorded to have

been complied with. The seven accused persons were thereafter committed to the High Court for trial under Section 246(1) of the Criminal Procedure Act, Cap.20 R.E.2002. There is no doubt that the provisions applied by the Hon. Principal Resident Magistrate in the committal proceedings are proper and relevant within crimes governed fully in terms of procedure by the Criminal Procedure Act, Cap.20 R.E.2002 only. Page 2 of 6 I I The offences for which the accused persons were charged with, at the committal proceedings, included the Charge of Occasioning Loss to a Specified Authority contrary to paragraph 10(1) of the first schedule to, and Section 57(1) and 60(2) of the EOCCA Cap 200 RE 2002, the value of the loss alleged to be 12,700,000,000 /=. Without doubt this is an economic offence and by virtue of the EOCCA, whose jurisdiction in terms of the law is with the High Court - Division of Corruption and Economic Crimes, hence the Resident Magistrate, \ ' Court were conducting committal proceedings. That being the case, committal proceeding are expected to be guided by the EOCCA Cap 200 RE. 2002 provisions unless where there is a lacuna. This can be discerned from Section 4(2) of the Criminal Procedure Act, Cap.20 R.E.2002 which states: "All offences under any other law shall be inquired into, tried and otherwise dealt with according to the provisions of this Act, except where that other law provides differently for the Regulation of the manner or place of investigation into, trial or dealing in any other way with those offences". (' It should be understood that reference to any other law in the above provisions, reading through Section 4(1) of the CPA refers to other laws apart from the penal code. Section 28 of the EOCCA - Cap.200 states: "Except as it is provided in this part to the contrary, the procedure for arraignment and for the hearing and determination of cases under this Act shall be in accordance with the provisions of the Criminal Procedure Act" The part referred in the above section is part IV. Page 3 of 6 Section 30 of EOCCA is in part IV of the EOCCA and this deals with committal proceedings for economic offences and we import it and it reads: Section 30(1) "Upon receipt of the copy of the information and the notice, the district court shall summon the accused person from remand prison or, if not yet arrested order his arrest and appearance before it, deliver to him, or to his counsel a copy of the information and notice of trial delivered to it under section 29(8), and commit him for trial by the court; and the committal order shall be sufficient authority for the person incharge of the remand prison concerned to remove the accused person from prison on the specified date to facilitate his appearance before the court." Section 29(3) of the EOCCA also provides for words to be used in addressing the accused person during committal proceedings By virtue of Section 63A of the EOCCA brought about by Written Laws (Miscellaneous Amendments) Act, No.3 of 2016, the Chief Justice I · may by order published in the Gazette make rules for the better performance of the court, a court established under Section 3 of the EOCCA Vide Act No.3 of 2016, that is the Corruption and Economic Crimes Division of the High Court with registry and sub registries delegated by the Chief Justice. The Rules were made by the Chief Justice and published they are; Economic and Organized Crime Control (The Corruption and Economic Crimes Division) (Procedure) Rules 2016, these Rules were published in GN No.267 of 2016, on 7 th September 2016. Page 4 of 6 Part III of the Rules deals with Committal Proceedings. It should · be remembered that Committal Proceedings take place after an information is filed. Information is filed in this Court and within seven days sent to the Resident Magistrate's court for committal proceedings as expounded in Rule 7. Rule 8 expounds on the conduct of committal proceedings on the information filed in this

court. Rule 8(3) states that after complying with the provisions in subrule(1) and (2) the magistrate shall address the accused person (\ with words or words to the like as states therein. The accused person is then committed for trial before the corruption and Economic Crimes Division of the High Court pursuant to Rule 8(4). The warrant of commitment for trial shall be in the form set out in the second Schedule to the Rules. Having expounded the relevant laws and procedure expected to guide committal proceeding for Economic crimes such as the present one, upon the information filed in this court that is the High Court Division of Corruption and Economic crimes. It is clear from the (1 records of the committal Proceedings in the court of Resident Magistrate Dar es Salaam Region, that the said procedure was not · complied with as exposed clearly. The words used under Rule 8, is "the Court shale', meaning compliance of the Rules is mandatory. There is also no recorded warrant of committal as specified in Rule 8(4). We therefore find that noncompliance of the above mentioned Rules in the conducted committal proceedings to be fatal irregularity. The committal Page S of 6 -, . '-· proceedings are therefore found a nullity for the fundamental irregularity 1n proceedings for non-compliance of relevant procedures. We also find the irregularity not curable under Section 388 of the Criminal Procedure Act, Cap.20 R.E.2002. We therefore quash the committal proceedings and the information 1s consequently transmitted back to the Resident Magistrate Court for proper conduct of committal proceedings ensuring compliance with laws. (With regard to the oral applications by the defence counsels for the 2nd accused person for reconsideration of bail conditions ordered by the court in view of the addition of the number of accused persons · and for the 5th accused person to be admitted to bail, counsel are directed to file formal applications thereto. Ordered. ~ W.B. Korosso

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