

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 79 OF 2017

*(C/F Resident Magistrate Court of Arusha at Arusha Economic Crimes Case
No. 83 of 2017)*

PETER S/O BURA TLEHHEMA 1ST APPLICANT

JULIUS S/O LEKEYA SABORE 2ND APPLICANT

LEKENI MBARYO PELENGONG'O @ SAMWEL..... 3RD APPLICANT

LOSORUWA LETURA LOCHUMALI 4TH APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING.

S.M. MAGHIMBI, J:

In this ruling, the applicants have brought this application under the provisions of Section 29 (4) (d) and Section 36 (1) of the Economic and Organized Crimes Control Act, Cap. 200 R.E. 2002 (The Act). The application originates from the Arusha Resident's Magistrate's court Economic Crimes Case No. 83/2017 whereby the appellants were charged with the offence of unlawful possession of Government Trophy c/s 86(2)(b) of the Wildlife Conservation Act, 2009 read together with

The Sections gives jurisdiction to grant bail to the applicants' According to Article 13 (6) (b) of the Constitution of the URT 1977 as amended, this

Article emphasizes the notion of presumption of innocence as the accused persons are only suspected to have committed the offences. He prayed that the applicants are granted bail.

On the certificate filed by the DPP, Mr. Mgalula Argued that although the certificate is filed it can also be challenged so long as the mother law, the Criminal Procedure Act, Cap. 20 R.E. 2002 (The CPA) requires that. Further that the Section that guides in denying bail which is Section 148 (4) of the CPA has been declared unconstitutional vide Criminal Appeal No. 65/2016 The Attorney General Vs. Jeremiah Mtobesya where the majority panel of the full bench of Court of Appeal declared that the Section is in contravention of the Constitution with regard to a person's freedom of movement. That on page 53 of that decision, the Court emphasized on the list of unbailable offences preferred in the legislation. Mr. Mgalula argued that from the wording in that decision, even the certificate filed by DPP u/s 36 (2) of the Act was overtaken by events.

Mr. Mgalula submitted further that the certificate ought to have been filed while the respondents were filing the charge sheet if at all they wanted to restrain bail. That his clients were informed that their bail is open but should be filed at the High Court and they even engaged an advocate to set the application into motion, surprisingly the certificate was filed while a hearing date has been scheduled. He hence argued that for those reasons, there is abuse of court process which is unfair to his clients.

Mr. Mgalula submitted further that the certificate resemble all grounds of malice because it has been a trend for DPP to file a certificate denying bail

to all the application. That they ask themselves whether there is any law or Government Notice issued to occasion denial of bail to all the accused persons. That the accused persons were arrested in different circumstance hence denying them bail is a conclusion that they have committed those offences. That what is done by DPP to restrain bail has social and economic consequences and as a result there is congestion of remands who have no idea of when their rights will determined. He argued that this is a denied of equal rights for all and the power vested on the DPP is unfair. It does not sure the purpose of this Hon. Court in dispensing justice.

In her reply, Ms. Sule submitted that from the records, the DPP signed the certificate on 14/09/2017 and was filed on 20/09/2017 and that under Section 36 (2) of Cap. 200, the DPP is empowered to file a certificate to deny bail on the accused person when he sees that there is an issue in investigation or for the interest of republic. That the power was elaborated in the case of **Emanuel Simfomain Marandu Vs. Republic, Criminal Appeal No. 252/2016** (unreported). On page 15 of that case the Court of appeal held that one the certificate is filed, it immediately has the effect of fettering the Court's hand in granting bail. Further that the Court also emphasized that in filing the certificate, the DPP need not give reasons to do so. She argued that from that authority and the powers of DPP under Cap. 200, the Court cannot proceed to grant bail to the applicants. Further that the circumstances in the case of Mtobesya cited by the applicant's counsel are different because in that case they were challenging Section 148(a) of the CPA and not Cap. 200.

Ms. Sule submitted further that they could not file the certificate while filing the charge sheet because the court did not have jurisdiction to hear this case, hence it was not the proper court to file the certificate. That the certificates are not only issued on economic cases because there are many economic cases whereby the accused are granted bail. She prayed that the court consider the certificate filed by DPP and the application be dismissed.

In reply, Mr. Mgalula submitted that on page 3 in the case of Emanuel Sinforam, the court held that the certificate should be filed subsequent to charge, He argued that in this case, the DPP has filed a certificate after the application has been filed in this Court and not as provided/done in the cited case. Replying on Ms. Sule's distinction of Mtobesya's case with the current case, Mr. Mgalula submitted that is wrong since in that decision the Cap. 200 was cited and that it was mutatis mutandis with Section 148 (2) of the CPA. He argued that the decision in Mtobesya was a full bench decision and that Section 4 of the CPA provides that it will apply to all cases of Criminal nature and that Cap. 200 is also a criminal legislation and hence bound by the CPA. He concluded that the Mtobesya decision was dealing with Section 148 (2) of the CPA and has an effect on Cap. 200.

I have heard the submissions of both parties to and opposing the application. I shall not be detained much. The cited case of Emanuel Massawe has given its position in relation to the Mtobesya case. The stance of the Court of Appeal in the case of Li Ling Ling and that in Emanuel Massawe case is very clear that once a certificate to object bail is filed by the DPP, the court's hand are fettered. For that reason, since there

is on record a certificate filed by the DPP under Section 36(2) of the Act, I cannot proceed to grant the prayers sought in this application. The application is consequently dismissed.

Application Dismissed.

Dated at Arusha this 23rd day of March, 2018

**(SGD)
S.M MAGHIMBI
JUDGE**

I hereby certify this to be a true copy of the original.




DEPUTY REGISTRAR

ARUSHA

10/07/2018