IN THE HIGH COURT OF TANZANIA

CORRUPTION AND ECONOMIC CRIMES DIVISION

AT DAR ES SALAAM

ECONOMIC CASE NO. 16 OF 2021

REPUBLIC

VERSUS

1. **HALFAN BWIRE HASSAN**
2. **ADAM HASSAN KASEKWA @ ADAMOO**
3. **MOHAMED ABDILLAH LINGWENYA**
4. **FREEMAN AIKAEL MBOWE**

RULING

31/8/2021 to 1/9/2021

E.B. Luvanda, J.

On 30th September, 2021 the learned Counsel for the accused, Mr. Peter Kibatala (leading Counsel) presented a notice of preliminary objection comprising of four grounds of objection on points of law on the jurisdiction of the Court. However, on the first appearance when the same were due for hearing, the learned Counsel opted to drop the second, third and fourth points, only argued the first point of objection.

The objection was argued by way of oral argument, where Mr. Kibatala took a ride for the panel of thirteen defence Counsels: Mr. Jeremiah Mtobesya Learned Advocate, Mr. John Mallya, Mr. Fredrick Kihwelo, Mr. Jebra Kambole, Mr. Sisty Aloyce, Mr. Selemani Matauka, Mr. Nashoni Nkungu, Mr. Michael

Kolomije Law Chambers
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Lugina, Miss. Boniphacia Mapunda, Mr. Alex Masaba, Mr. Faraji Mangula, Mr. Michael Mwangasa, Mr. Gaston Shundu Galubindi learned Advocates. The panel for prosecuting officers was led by Mr. Robert Kidando Senior State Attorney assisted by Mr. Nassoro Katuga, Mr. Ignas Mwinuka, Ms. Esther Martin, learned Senior State Attorneys and Ms. Tulumanywa Majigo learned State Attorney.

Principally I appreciate the opening statement by the learned defence Counsel regarding general rule that issues of jurisdiction being of paramount to be determined first (see **K.S.F. Kisombe vs Tanzania Ports Authority**, Civil Appeal No. 2 of 2009, Court of Appeal at Dar es Salaam (unreported) at pages 7,8,9 and **Republic vs Farid Hadi Ahmed and 35 others**, Criminal Sessions Case No. 121 of 2020 High Court of Tanzania at Dar es Salaam (unreported) at pages 21 and 22. Equally I agree with an argument that when there is a conflict between the specific statute and general statute, the former prevail. I also shake hand with the argument of the defence Counsel that it is a cardinal principal of law that where the wording of the statute is clear and unambiguous, should be applied in a like manner.

Reverting to the substantive argument, it is true that section 3 of the Prevention of Terrorism Act No. 21 of 2002, Cap 19 R.E. 2002, define court

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to mean the High Court of Tanzania and as the case may be, the High Court of Zanzibar. Admittedly section 34(1) of Act No. 21 of 2002, confer jurisdiction to the High Court to try offences under the Act to wit Act No. 21 of 2002. It is true that in the amendment effected by The Written Laws (Miscellaneous Amendments) Act No. 3 of 2016, the provision of sections 3 and 34 of Act No. 21 of 2002 were not amended, remained intact. However, paragraph 24 of Act No. 3 of 2016, capture all offences under the Prevention of Terrorism Act, to be economic offences. It is to be noted that both Counsels had argued and invited this Court to read the statute without importation of any interpretation. While I appreciate that argument, however circumstances under hand dictate departure to the invitation. To my view, the circumstance herein suits importation of absurdity doctrine which entails court to interprete statutes contrary to their plain meaning to avoid absurdity legal conclusion or yield an intended result. Now applying purposive approach or construction, the intention of the Parliament actually was to cloth this Court with jurisdiction to try offences under the Prevention of Terrorism Act. A mere fact that the provision of sections 3 and 34 of Act No. 21 of 2002 were not amended, on itself cannot be taken to have wholly ousted the jurisdiction of this Court to try terrorism offences. To this end, I

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shake hands with the argument of Mr. Mtobesya learned Counsel that the situation under hand suggest that there are two statutes giving power to two set of courts to try terrorism offences. The learned defence Counsel in their endeavor to ensure this court land smoothly to their proposition and conclusion that this court has no jurisdiction, made some safeguard to the fact that Cap 200 is the general law which provide for several offences clustered as economic offences and therefore were of the view that the specific law in the circumstances become the Prevention of Terrorism Act, which takes supremacy. I hesitate to ascribe easily to that proposition, because offences under the Terrorism Act are now economic offences which fall under the scheme of Cap 200 R.E. 2019. Section 2 of Cap 200 as amended by Act No. 3 of 2016, define court to mean the Corruption and Economic Crimes Division of the High Court established under section 3. Section 3 cater for establishment and jurisdiction of the Court. Subsection (3)(b) of section 3, provide that, I quote,

> *'The Court shall have jurisdiction to hear and determine cases involving-*
>
> *(a)...inapplicable...*

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(b) economic offences specified under paragraphs 22,23,24,25,26,27,28,30,31,32,33,34,35,36, 37 and 38 of the Schedule regardless of their value'

Of interest to me is paragraph 24 which is all about offences relating to terrorism.

Happily, both the provision of sections 3 and 34(1) of Act No. 21 of 2002 and section 3(3) of Act No. 3 of 2016 (Amendment) does not create exclusivity. As a matter of inspiration by way of analogy, reference is made to the provision of section 107 of the Land Act, Cap 113 R.E. 2002 (before amendment) where jurisdiction to determine land dispute was exclusively vested to special Court, Division and Tribunal. Equally section 94(1) of the Employment and Labour Relation Act, No. 7 of 2004, confer exclusive jurisdiction to the Labour Court over the application, interpretation and implementation of the provisions of that Act and to decide matters specifically mentioned therein.

Black's Law Dictionary (8th ed. 2004) define exclusive jurisdiction to mean a court's power to adjudicate an action or class of actions to the exclusion of all other courts.

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Had the two statutes or any of them, to wit Act No. 21 of 2002 and/or Act No. 3 of 2002 created exclusivity over terrorism offences, then an argument by the learned Counsel for defence that there is a conflict between the provision of Act No. 21 of 2002 and Act No. 3 of 2016, to my opinion, could be valid. The learned defence Counsel was of the view that terrorism offences were put under paragraph 24 inadvertently. But as depicted above, I cannot ascribe to this proposition.

I therefore nod with the argument of the learned Senior State Attorney that this Court has jurisdiction to try terrorism offences.

Therefore, the preliminary objection is overruled.



E.B. Luvanda
Judge
01/09/2021

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