IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MZIRAY, J.A., KOROSSO, J.A. And KITUSI, J.A.)

CRIMINAL APPEAL NO. 391 OF 2017

JAMES BURCHARD RUGEMALIRA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the Ruling of the High Court of Tanzania, Corruption and Economic Crimes Division, at Dar es Salaam)

(Matogolo, J.)

dated the 30th day of August, 2017
in
Economic Cause No. 21 of 2017

.....

JUDGMENT OF THE COURT

19th & 28th June 2019

KITUSI, J.A.:

There are, at the Resident Magistrates' Court of Dar es Salaam at Kisutu, pending charges against James Burchard Rugemalira, the appellant, comprising of 12 counts six of which (7th – 12th) being of money laundering contrary to Section 12 (e) and 13 (a) of Anti – Money Laundering Act, No. 12 of 2006. Vide Miscellaneous Economic Cause No. 21 of 2017. The appellant applied to the Corruption and Economic Crimes Division of the

High Court that he be admitted to bail pending trial. The High Court, (Matogolo, J.) dismissed the application for being unmaintainable.

Aggrieved by the said decision of the High Court, the appellant appeals hereto. In the Memorandum of Appeal lodged on 23rd October, 2017 the appellant invites us to:-

> *"(a) set aside the High Court's ruling and orders dated 30th August, 2017 which denied him bail;*
>
> *(b) declare that the particulars of offence contained in the substituted charge sheet dated 3rd July, 2017 do not establish the offence of money laundering;*
>
> *(c) admit the Appellant to bail by providing to him reasonable bail conditions.*
>
> *(d) make or issue any other orders or directions that the Court may, in the circumstances, deem fit, just and proper."*

The foregoing tells it all, that is, in essence the ultimate reliefs being sought are to quash and set aside the decision of the High Court in Misc. Economic Cause No. 21 of 2017 and therefore admit the appellant to bail upon reasonable conditions. We are also asked to make a declaratory order regarding the propriety of the charge in as far as the counts of Money Laundering are concerned.

Before the High Court, the application was by way of Chamber Summons preferred under Section 148(1) & (5)(e) of the Criminal Procedure Act, Cap 20 R.E. 2002, and Sections 29 (4) (d) and 30 (1) of the Economic and Organized Crime Control Act, Cap 200 R.E. 2002. The application was supported by the appellant's own affidavit filed on 3rd July, 2017. It is on record that prior to 3rd July, 2017 the charge consisted of four counts only, that is to say; conspiracy, leading organized crime, obtaining money by false pretences and occasioning loss to a specified authority. This charge was on 3rd July, 2017 substituted with an amended one that brought in the counts of money laundering referred to earlier.

On 13th July, 2017 the appellant was granted his application to file a supplementary affidavit and he filed one. There was a counter affidavit in response to the substantive affidavit but none was filed in response to the supplementary. This, it was argued, connoted that the contents of the supplementary affidavit had gone uncontroverted. The appellant has maintained that argument to this point. What is the gist of the averments in the affidavits?

The relevant averments in the substantive affidavit are contained in paragraphs 7, 8, 9, 12 and 13 which we shall paraphrase as hereunder: -

7. *That his application for bail at the trial court was unsuccessful for the reason that the said court ruled that it lacked jurisdiction.*

8. *That the applicant caused the application at the High Court to be lodged.*

9. *That he believed the High Court has jurisdiction and that the offences charged were bailable and further that he has a constitutional right to bail.*

12. *That he has reliable sureties and undertook to enter appearance in court whenever so required.*

13. *That he was ready and willing to comply with any bail conditions.*

The supplementary affidavit tells a long tale but we think relevant to the application before the High Court as reflected in the Chamber Summons, were paragraphs 7, 35, 36, 37 and 38. We shall also paraphrase these paragraphs: -

7. *That the charges of money laundering have been added with malicious intent.*

35. *That the charges of money laundering are misplaced because the particulars thereof do not disclose that offence.*

36. *That going by the definition of money laundering, there are no elements of that offence in the particulars of the charge as he, the deponent and his Company, have at all times acted transparently.*

37. *That bail is his constitutional right.*

38. *That the supplementary affidavit was in support of his earlier affidavit and application for bail.*

At the hearing before the High Court Mr. Didace, learned advocate, argued on behalf of the appellant and conceded that money laundering is a non-bailable offence but pointed out that there is no money laundering in this case because the relevant counts do not disclose it. He cited quite a number of decisions on the legal requirements for a charge to disclose the offence and adequately inform the accused the particulars and nature of the offence. Secondly, he submitted, the counts of money laundering have been introduced into the charge for an ill motive to see the appellant continue to be in remand custody.

It was further argued by the learned counsel that since the inadequacy of the charges and the malice in introducing the counts of money laundering have been stated in the supplementary affidavit to which no counter affidavit had been filed, the said averments must be taken to

be uncontroverted. Counsel moved the High Court to strike out the counts of money laundering and admit the accused/appellant to bail.

For the Respondent Republic Dr. Zainabu Mango, learned Principal State Attorney, submitted that money laundering is not bailable, citing Section 148 (5) of the Criminal Procedure Act, Cap 20 R.E. 2002 (the CPA) as amended by Section 19 of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2007 which introduced paragraph (iv). Then submitting on the alleged defect in the charge sheet, the learned Principal State Attorney pointed out that the proper court to address the matter would be the Resident Magistrates' Court in terms of Section 234 (1) of the CPA, and that the High Court would, only be seized of the matter when the appellant is committed for trial before it.

On the issue of the alleged malice, Dr. Mango submitted that there is no way the DPP would have figured out that the applicant was going to apply for bail. This line of argument was, in our view, suggesting that the DPP could not have amended the charge to include money laundering with malicious intent to deny the appellant bail if he had no knowledge of the said appellant's intention to present an application for bail.

The learned High Court Judge was of the view that the application before him required the following issues to be resolved;

1. Whether the charged offences of money laundering are bailable.
2. Whether the High Court could, at that stage, assess whether or not the particulars of the charge disclosed the offence of money laundering.
3. Whether the particulars in the counts of money laundering (which were three at that stage) established the charged offence.
4. Whether the High Court should grant bail.
5. On what conditions should bail be granted.

The learned High Court judge answered the first issue in the negative holding that money laundering is not bailable in terms of paragraph (iv) to section 148(5) of the CPA introduced by section 19 of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2007. As for the second issue the High Court took the view that though it is vested with the jurisdiction to try the case where the DPP does not transfer it to a subordinate court under section 12(3) and (4) of Cap 200, it could not determine the correctness of the charge when the matter is pending committal before the Resident Magistrates' Court. It further held that the cases that Mr. Didace

relied upon on the point are all distinguishable to the case before it, because in all situations the High Court was moved to exercise its revisional powers. The cases cited, and eventually distinguished were **Raza Hussein Ladha & 9 Others Vs. DPP** Misc. Criminal Applications No. 32 & 43 of 2014, HC DSM District Registry; **Henry Kileo & Others V. Republic**, Misc. Criminal Applications No, 53 of 2013 HC Tabora District Registry; **Basil Pesambili Mramba & Another V. Republic**, Misc. Criminal Application No. 54 of 2008 HC DSM District Registry; **Wilfred Lwakatare V. Republic** Misc. Criminal Application No. 14 of 2013 HC DSM District Registry and; **Republic v. Farid Hadi Alined & 21 others,** Criminal Appeal no. 59 of 2015 HC DSM District Registry (all unreported).

Next, the High Court considered the issue whether it could strike out the counts of money laundering. Again, it held that such powers could only be exercised by the trial court, and since the appearance of the appellant before that court was not for trial, there would be an appropriate time for the High Court to resolve that issue when it eventually sits as a trial court. It cited the case of **DPP v. Ally Nuru Dirie & Another** [1988] TLR 252 which held that trial commences when an accused appears before a court competent to convict or acquit him. Thus, the learned judge considered the prayer to strike out the charge as immature because the

accused/appellant had not been committed to it for trial. Similarly, the learned judge treated the allegation of malice as having been raised prematurely before a wrong forum. It further held that in any event the prayer to strike out the counts of money laundering was not among the prayers presented in the Chamber Summons.

The appellant is unhappy with that decision and has appealed to us on the grounds we referred to earlier. However, while the main memorandum of Appeal wants us to quash the decision of the High Court, declare the charges of money laundering defective and admit the appellant to bail, the supplementary Memorandum of Appeal is, with respect, a verbose account of things quite unrelated to the application for bail. We are categorically saying so at this early stage so as to weed out the materials that are unnecessary for the determination of the issues before us.

At the hearing of the appeal, though represented by Mr. Pascal Kamala assisted by Mr. Augustino Muga, learned advocates, the appellant insisted to be given an opportunity to address us personally before his advocates took the floor. Although we found the request to be out of the ordinary, we allowed him to speak his mind regarding the appeal. We are

satisfied that the rule of practice which requires a legally represented person to address the Court only through his advocate is merely a rule of etiquette and decorum that does not, in deserving circumstances, take away his right to address the Court personally. For the respondent Republic, Dr. Zainabu Mango, Messrs. Tumaini Kweka and Faraja Nchimbi, learned Principal State Attorneys assisted by Ms. Elizabeth Mkunde, learned State Attorney, formed a team that fiercely contested the appeal.

The appellant had filed written submissions drawn by himself, but there were none by the respondent. The best part of the written submissions, just as it is with the Supplementary Memorandum of appeal, contains protests by the appellant that he is an innocent man being persecuted. Considering the unusual way in which this appeal was argued it became necessary for us to keep the parties, especially the appellant, constantly reminded of the governing issues that are for our determination, which are:-

(i) Whether the learned High Court Judge was correct in holding that the offence of money laundering is not bailable.

(ii) Whether the learned High Court Judge was correct in declining to strike out the charges of money laundering on account of alleged failure to disclose that offence.

We shall, with respect, ignore all those paragraphs in the Memorandum of Appeal and all those arguments in the written submissions which try to smuggle in evidence of the appellant's asserted innocence. The appellant would have us believe that we have unlimited powers to correct an alleged wrong or injustice, and he asked us to do so under Section 4 of the Appellate Jurisdiction Act Cap 141 R.E 2002. However, we cannot walk that path because doing so will cause chaos in the administration of justice. The provision of Section 4 of the AJA which the appellant considers as giving us such wide powers does, actually, limit our powers to appeals and revision, and to be exercised when we are correctly moved. This, we shall endeavor to demonstrate later.

First, we propose to address the issue of the alleged defects in the charge sheet, the second issue. Our call here is not to determine whether or not the charge is defective, but whether the High Court was right in law in declining to determine that issue. Submitting on this point the appellant referred to the averments in his supplementary affidavit that the particulars

of the counts alleging money laundering do not disclose that offence. Secondly, he referred to the averment alleging malice, that is that, the charges of money laundering have been preferred for an ill purpose so as to deny him bail. The thrust of his argument is that these averments were not countered by the respondent so the High Court ought to have taken them to be undisputed. Mr. Kamala chipped in by drawing our attention to paragraph 57 of the supplementary memorandum of appeal. This paragraph has 17 points, and the first is that since the assertion of malice was not controverted by the respondent, the same should have been relied upon by the High Court in striking out the substituted charge consisting of counts of money laundering.

It was Dr. Mango who responded to this point. The learned Principal State Attorney submitted that although the respondent did not counter the accusations of defects in the charges of money laundering and the prayer to strike out those charges, it does not mean that they were conceded. She submitted that the contention alleging malicious prosecution was raised prematurely. And further she submitted that the counter affidavit filed by the respondent must be taken to have responded to both the affidavit and the supplementary affidavit.

In rejoinder, Mr. Kamala submitted that the appeal is against the denial of bail as well as failure by the High Court to strike out the defective charges. He insisted that the charges alleging money laundering were defective because the particulars did not disclose that offence.

In determining this issue, we are not losing sight of the fact that if we find merit in it, we are going to have to direct that the matter be remitted to the High Court for it to decide on the alleged defects one way or the other. We cannot, as the appellant wants us to, step into the shoes of the High Court and strike out the charges. The law is settled that a matter not decided by the High Court or a subordinate court exercising extended jurisdiction cannot be decided by us, and that is the import of Section 4 of AJA, which we now reproduce:-

> *"4-(1) The Court of Appeal shall have jurisdiction to hear and determine appeal from the High Court and from subordinate courts with extended jurisdiction.*
>
> *(2) For all purposes of and incidental to the hearing and determination of any appeal in the exercise of the jurisdiction conferred upon it by this Act, the Court of Appeal shall, in addition to any other power, authority and jurisdiction conferred by this Act, have the power of revision and the power,*

authority and jurisdiction vested in the Court from which the appeal is brought.

(3) Without prejudice to subsection (2), the Court of Appeal shall have the power, authority and jurisdiction to call for and examine the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision made thereon or as to the regularity of any proceedings of the High Court"

This is an appeal from the High Court, but we may only decide on points that were decided upon by it, for ours is the duty to determine the correctness or otherwise of a decision. In this case there is no decision on whether the charges are defective or not. In many cases we have decided on this aspect and we think that trend should be maintained lest we be dubbed "The Bully Brother" as Prof. Fimbo refers to this Court in his book; **An Exposition of The Court of Appeal Decisions**, TUKI, University of Dar es Salaam, Page 167. In **Celestine Maagi V. Tanzania Elimu Supplies (TES) and Another,** Civil Revision No. 2 of 2014, (unreported), we said the following regarding our jurisdiction:-

'The powers of the Court on matters arising from the lower courts are only exercisable in two ways.

First, by way of appeal. And second by way of revision. This is provided under S. 4(1)-(3) of the Act. ***And ordinarily the Court would exercise its appellate and revisional powers only after the lower courts have handed down their decision".*** (Emphasis ours)

The decision of the High Court was based on these grounds; **first** that striking out the charge was not one of the prayers in the chamber summons. **Secondly,** the High Court was yet to be seized with the matter, because the same was still pending committal before the Resident Magistrates' court. The learned Judge distinguished the cases which had been cited by the appellant in support of his case, in that in those cases the High Court was sitting in its revisional jurisdiction.

To begin with, we cannot fault the learned Judge on the fact that the prayer to strike out the charges of money laundering was not among the prayers in the chamber summons, because that is the truth of the matter, evident from that document. We take a chamber summons to be in an application what a plaint is in a suit. In the case of **ANTHONY NGOO & DAVIS ANTHONY NGOO V. KITINDA KIMARO,** CIVIL APPEAL NO. 25 OF 2014 (unreported), we stated in relation to this aspect:-

"Cases must be decided on the issues on record and if it is desired to raise other issues they must be placed on record by amendment. In the present case the issue of dissolution of partnership and sale of properties was not raised in the pleading. The dissolution order was made after being referred by respondent's written submission."

We are aware and it is settled that parties are bound by their own pleadings. See, **James Funke Gwagilo V. The Attorney General**, [2004] TLR 161; **Peter Karanti & 48 Others V. Attorney General & 3 Others,** Civil Appeal No. 3 of 1994, (unreported). It is also settled that matters not raised or determined by the High Court cannot be determined by this Court. There is a score of decisions supporting that position such as; **Diha Matofali V. Republic**, Criminal Appeal No. 245 of 2015; **Martin Misara V. Republic**, Criminal Appeal No. 428 of 2016 and; **Mustapha Khamis V. Republic**, Criminal Appeal No. 70 of 2016 (all unreported).

The learned High Court Judge was very much aware of his duty when deciding this point. We prefer to reproduce the relevant part;

"I must make it clear that my reluctance to deal with what the leaned counsel for the applicant has asked this court to do is not abdication of judicial

duty, but that the prayers were wrongly placed, that is, they are not the right place and at the right time."

Isn't this the same as what we said years ago in **Attorney General V. W.K.Butambala** [1993] TLR 46? Here is what we said:-

> *"We must not be understood to mean that judges should shy away from their function of construing the Constitution which is their proper duty and legitimate province. But there must be occasion for that. That is judicial power reserved for judicial situations. When we are moved, we move into judicial action and fulfill our responsibilities.* Not otherwise."

In view of the above position we firmly hold that the learned judge was correct in declining to enter the arena at the time when it was not yet his time to do so. What would be the situation, we ask ourselves, if superior courts would act in the manner suggested by the appellant in this matter? Certainly, there would be judicial anarchy which we must guard against. In a book titled; **The Appellate Craft**, by J.E COTE, Canadian Judicial Council, 2009, at page 16, the author offers this counsel to appellate courts or Judges:-

"Solving an injustice in one case by inventing a whole new doctrine is like burning down a hotel to rid it of mice: certainly expensive, likely to injure people and totally unnecessary. A 69c mouse trap would work just as well."

We think we have demonstrated enough reason to agree with the learned Judge, and we answer the second issue in the affirmative, that is, the judge was correct in declining to strike out the counts of money laundering. We now turn to the first issue.

The first issue is whether the High Court Judge was correct in concluding that money laundering is not bailable. There was quite a scene in arguing this point. The learned State Attorneys for the respondent maintained that money laundering is not bailable under Section 148(5)(a)(iv) of the CPA. At the instance of the Court the appellant's counsel and the respondent's Principal State Attorneys were required to address what looked like a lacuna in the relevant law. The question was that; in listing money laundering as an Economic Offence through Act No 3 of 2016, why didn't Parliament include it as among the non-bailable offences like it did with offences involving trafficking of drugs?

Responding to the question, Mr. Kweka submitted that the Drugs and Prevention of Illicit Traffic in Drugs Act was completely repealed whereas the Economic and Organized Crime Control Act, Cap 200 was merely amended. He further submitted that Section 148(5)(a)(iv) of the CPA has not been amended by Section 36 of Cap 200, therefore it is still valid, and pointed out that an amendment of a provision of a statute must be express, not to be implied. For this, the learned Principal State Attorney cited the case of **DPP V. Aneth John Makame,** Criminal Appeal No. 127 of 2018 (Unreported).

Mr. Nchimbi introduced a rather interesting point. The learned Principal State Attorney submitted that when the alleged money laundering was committed, it had not been included as an Economic Offence. He submitted therefore that the charges against the appellant in Economic Crimes Case No. 27 of 2017 include economic and non-economic offences which the DPP has powers to do under Section 12(3) of Cap 200. He argued that the counts of money laundering in this particular case are not economic offences therefore bail thereof is governed by the CPA. He further submitted by raising a rhetoric, that would we say that by enacting Act No. 3 of 2016 Parliament intended Money Laundering, a serious offence, to be bailable? Mr. Nchimbi proceeded to provide the answer, that

considering the tone of Sections 4 of the CPA, it could not have been the intention of the legislature to make money laundering a bailable offence. The learned Principal State Attorney drew our attention to the fact that Act No. 3 of 2016 amended several laws including the CPA but intentionally left Section 148(5)(a)(iv) intact.

For the appellant Mr. Kamala submitted that once an offence is designated as an economic offence the provisions of Cap 200 apply, and if Parliament had intended money laundering to be unbailable it would have stated so under Cap 200. Counsel submitted further that it is a cardinal rule of statutory interpretation that if a statute does not prohibit something then it must be interpreted in favour of the accused that the act in question is permitted. Mr. Mugo submitted that the case of **Aneth Makame** (supra) is distinguishable, then went on to argue that the intention of the legislature in as far as money laundering is concerned must have been to make money laundering a bailable offence.

The first issue calls upon us to pronounce ourselves on whether bail in money laundering is governed by the CPA as submitted by the respondent's learned Principal State Attorneys or Cap 200 as submitted by the learned counsel for the appellant. It is a question of statutory

interpretation and, fortunately, it is not a new territory. The narrower premise of this issue requires us to discover the intention of the legislature, that is, whether it was its intention that money laundering be bailable or not?

We are aware of the common rule of statutory interpretation that when the words of a statute are unambiguous, then courts have to go by what the letter of that particular piece of legislation says. This is the essence of our decision in **Republic V. Mwesige Geofrey And Another,** Criminal Appeal No. 355 of 2014 (unreported). We cited this case in another unreported case of **Resolute Tanzania Limited V. Commissioner General, Tanzania Revenue Authority,** Civil Appeal No 125 of 2017, reproducing the following passage;

> *"Indeed, it is axiomatic that when the words of a statute are unambiguous, "judicial inquiry is complete". **There is no need for interpolations, lest we stray into the exclusive preserve of the legislature under the cloak of overzealous interpretation. This is because courts must presume that the legislature says in a statute what it means and means in a statute what it says there."***

However, there lingers some doubt in the case at hand whether, as we have shown a while ago, bail in money laundering, which is now an economic offence, should be considered under Cap 200 or under the CPA. Parties have taken different positions and, we see this scenario as requiring us to discover the intention of the legislature. In **Ngassa Kapuli @ Sengerema V. Republic,** Criminal Appeal No. 160 "B" of 2014 (unreported), we took the following view:-

> *"The purpose of statutory interpretation is to discover the intention of the legislature."*

We said an almost similar thing in **Chiriko Haruni David V. Kangi Alphaxard Lugola & 2 Others,** Civil Appeal No. 36 of 2012 (unreported);

> *"The traditional wisdom is that the search for legislative intent is central to statutory interpretation."*

In the latter case we further held that the intent should be ascertained from the words, but went on to list down other things that may help in the discovery. These are:-

> "1. **Historical background**
>
> **2. Statement of objects and reasons**

3. **The original Bill as drafted and introduced**
4. **Debates in the legislature**
5. **State of things at the time a particular legislation was enacted.**
6. Judicial construction
7. Legal dictionaries
8. **Commonsense"**

(Emphasis supplied).

Mr. Kamala has submitted for the appellant that any economic offence such as money laundering is dealt with under Cap 200 and further that if that law does not expressly provide that money laundering is not bailable, then it is bailable. Mr. Kweka maintains that if the legislature had meant to make money laundering a bailable offence it would have expressly stated so by removing it from Section 148 (5) (a)(iv). Mr. Nchimbi's argument is that the charge sheet shows that money laundering appearing in the 7th, 8th, 9th, 10th, 11th and 12th counts has been preferred under the Anti – Money Laundering Act No. 12 of 2006, not under Cap 200. The thrust of his argument is that they are to be dealt with under the CPA as provided for in Section 4 of the CPA. Further he submitted that the

legislature could not have intended money laundering to be a bailable offence because it is a serious one. This last point was conceded to by the appellant's counsel when we wanted him to comment if there was anything in the charge sheet suggesting that money laundering has been charged as an economic offence. He responded that there was no such indication.

We propose to deal with this issue in two fronts. First, to determine whether Parliament intended that money laundering be a bailable offence. Secondly, whether money laundering in the instant case is an economic offence. In the first front we think a bit of historical background to the enactment of the Anti – Money Laundering Act No. 12 of 2006 will shed some light on the intention of the legislature.

Before 2006, money laundering was defined under The Mutual Assistance in Criminal Matters Act, No. 24 of 1991, Cap 254. Section 2 defined Money Laundering as;

> *"Money – laundering offence", in relation to the proceeds of a serious narcotics offence, means an offence involving-*
>
> *(a) The engaging, directly or indirectly, in a transaction which involves money or other property, which is, in terms of the Proceeds of Crime Act;*

(b) *The receiving, possessing, concealing, disposing of property, which is proceeds of crime in terms of the Proceeds of Crime Act."*

It was the Proceeds of Crime Act, Cap 256 RE 2002 which created the offence of Money Laundering under Section 71(3). The said Section provided;

"71-(3) A person shall be guilty of the offence of money – laundering if, and only if, he –

(a) *Engages, directly or indirectly, in a transaction, whether in or outside the United Republic, which involves the removal into or from the United Republic, of money or other property which is the proceeds of crime; or*

(b) *Receives, possesses, conceals, disposes of, brings into or removes from the United Republic, any money or other property which is the proceeds of crime,*

while he knows or ought to know or to have known that the money or other property is or was derived or realized, directly or indirectly, from some form of unlawful activity."

Then the Anti- Money Laundering Act No. 12, was enacted with the following preamble;

"An Act to make better provisions for prevention and prohibition of money laundering, to provide for

the disclosure of information of money laundering, to establish a Financial Intelligence Unit and the National Multi – Disciplinary Committee on Anti – Money Laundering and to provide for matters connected thereto."

This Act widened the definition of money laundering and listed down 25 predicate offences. The Proceeds of Crime Act was amended by the Written Laws (Miscellaneous Amendments) Act No. 2 of 2007 which provided that money laundering carries the meaning ascribed to it in the Anti – Money Laundering Act. In addition, this Act defined ''serious offence' under Section 4:-

"Serious offence means money laundering and includes a predicate offence."

The Anti – Money Laundering Act was amended by Act No 1 of 2012 which gave it more teeth including the power of the DPP to prosecute a person for an offence committed outside the United Republic, as well as to prosecute foreigners.

In view of the above, we accept Mr. Nchimbi's argument that money laundering is a serious offence, and that in not expressly providing that the offence is not bailable, Parliament could not have intended it to be bailable. We do not share with Mr. Kamala the view that the omission to

categorically specify money laundering as non bailable should be interpreted in favour of the appellant. We say so because Section 148(5)(a)(iv) of the CPA has not been amended to remove money laundering from the list of non-bailable offences.

We think it is harmless to also observe that the appellant has sort of shifted the goal posts. Before the High Court, Mr. Didace for the appellant had submitted that Money Laundering is not bailable. His trump card was that the charges of Money laundering had not been disclosed, an argument which, if successful, it would secure the appellant's bail. We think the first limb of his submissions was correct and the appellant has not convinced us otherwise in this appeal. As regards the second limb, we have already found that the learned Judge was correct in declining to determine that issue.

We turn to the last consideration, which, having concluded the first part of the issue in the way we have done, will not change our final destination. The question is whether the counts of money laundering have been drawn under the Economic and Organized Crime Control Act, Cap 200. Obviously, the answer is that they are not, and when the attention of counsel for the appellant was drawn to that fact, he conceded. This turn of

events, in our view, makes the submissions and prayers by the appellant and his advocates, all the more unmaintainable. We conclude this point by holding that the appellant's bail cannot be considered under Cap 200 because he has not been charged under that Act. Even then, we are satisfied that Section 4 of the CPA provides the general rule that all offences are treated under the CPA unless the exception is expressly stated. The provision of Section 4 is to this effect;

> *"4-(1) All offences under the Penal Code shall be inquired into, tried and otherwise dealt with according to the provisions of this Act.*
>
> *(2) 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."*

We also note that the application before the High Court cited Section 148 (1) & (5) (e) of the CPA and Sections 29(4) (d) and 30 (1) of Cap 200. We wonder then, why does the appellant argue that the CPA is inapplicable while the same was among the provisions that were cited by him in moving the High Court. We reaffirm our decision that the provisions of the CPA are

applicable in this case and the learned High Court Judge rightly held that the offence is not bailable under Section 148 (5) (a) (iv).

All that said, we find no merit in this appeal and, accordingly, we dismiss it.

DATED at **DAR ES SALAAM** this 27th day of June, 2019.

R. E. MZIRAY
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL