

# Money Laundering – a Non-Bailable Offense

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The Court of Appeal has recently in its judgment held that:

- Since money laundering has not been removed from the list of unbailable offences under the Criminal Procedure Act Cap 20 it still remains unbailable;
- As money laundering is a serious offence the Parliament did not intend for the same to be bailable;
- The applicable law to be used for bail in money laundering charges committed before the enactment of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 which amends the Economic and Organized Crimes Control Act, Cap 200 is the CPA, Cap 20 ;
- The application for bail could not lie under the EOCCA as the accused was not charged with money laundering as an economic offence;
- The High Court was correct in declining to strike out the charges of money laundering at the time of the application for bail as the same were raised prematurely and could only be addressed by the court once the accused was committed to trial;

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This case arises from a Criminal Appeal No. 391 of 2017, was charges with a money laundering charges (before money laundering became an economic offense) amongst other charges within economic offense which include occasioning loss to a specified authority and leading organized crime and a penal offense which was obtaining money by false pretense.

The current Court of Appeal judgment arose after the Appellants bail application to the High was denied on grounds that the Court had no jurisdiction to determine the correctness of the charge before the accused was committed to it for trial and on the issue of malice that the same was raised prematurely. In the said application for bail the Appellant had raised two grounds for bail i.e. the counts of money laundering were added maliciously with intent to deny him bail and that the particulars of the money laundering charge do not disclose the offence.

The Court of Appeal while hearing the matter raised two issues one, whether the High Court was correct in holding that the offence of money laundering is not bailable and two, whether the High

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**ALERT MEMORANDUM**

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Court was correct in declining to strike out the charges of money laundering on account of alleged failure to disclose the offence.

In the course of hearing, the Court of Appeal raised the issue regarding the position of law after money laundering became economic, and whether the Economic and Organised Crime Control Act (EOCCA) or Criminal Procedure Act (CPA) were the law applicable to the Appellant's application for bail.

**The Judgment**

The Court of Appeal confirmed the High Court's findings that the correctness of the charge cannot be determined by the High Court during bail application before the accused is committed to the High Court for trial. It held that money laundering is a 'serious offence', so the Parliament could not intend it to be bailable.

The Court of Appeal also said that since the offence of money laundering has not been removed from the list of unbailable offences under section 148(5)(a)(iv) of the CPA, it is still unbailable. The Court, however, did not explain whether its position is restricted to the circumstances of this case, where the law applicable for bail was found to be CPA because offences of money laundering were committed before money laundering became economic offence, or it extends to offences committed after 8th July 2016 when money laundering became economic through Act No. 3 of 2016.

Further, the Court of Appeal held that since the Appellant was not charged with money laundering as an economic offence under the

EOCCA, the Appellants application for bail could not lie under the EOCCA as the applicable law for bail for money laundering offences committed prior to Act No. 3 of 2016 is the CPA.

The Court of Appeal stated that section 4 of the CPA allows the CPA to be used to deal with all crimes unless the Act creating the offence charged provides otherwise. However, the Court of Appeal did not refer to the case of Edward Kambuga and another (1990)TLR 84 where it said that CPA does not apply to a bail application for an economic offence, which remains open for parties to explore.