

IN THE HIGH COURT OF TANZANIA
AT MOSHI.

MISCELLANEOUS CRIMINAL APPLICATION NO. 23 OF 2007
[C/F ECONOMIC CRIME CASE NO 3 OF 2007 AT MOSHI DISTRICT
COURT AT MOSHI]

STEWART KIMAMBO S/O KIMAMBO & 3 OTHERS.....APPLICANTS
VERSUS
REPUBLIC.....RESPONDENT

RULING

MUGASHA, J.

This is a ruling in respect of a consolidated application for bail pending trial made under section 29(4) d of the Economic and Organised Crime Control Act Cap 200. The application is supported by the affidavits of Mr Urjo and Mr. Shayo all learned Counsels for the applicants setting out grounds of the application.

The record shows that, the applicants together with another person are jointly charged with Disruption, damaging and interference with property which is used for the purposes of providing necessary services contrary to paragraph 20(1) (2) of the First Schedule made under section 57(1) of the Economic and Organised Crime Control Act Cap 200, pending trial before the Resident Magistrate Court.

The particulars of the offence are that, the applicant and four other persons, between January 2004 and 17th September 2007 at unknown times and places within the Municipality of Moshi in Kilimanjaro Region, jointly and together did disrupt, damage and interfere with electricity network to wit they cut transformer outlet cables, trithing fuel and cutting winding wires from the same causing a loss of tshs. 50,000,000/= to Tanzania Electric Supplies Company and such acts were likely to endanger human life.

The applicants were represented by Mr. A. Shayo and Mr. Urio all learned Counsels, and the respondent was represented by Mr. Mauggo, learned State Counsel.

In the affidavits oral submissions of the learned counsels they contend that the offence under which the applicants stand charged is bailable and the applicants have reliable sureties and are willing to comply with the conditions of bail as shall be ordered by the court. Moreover, the Counsels for the Applicants, submitting on sum required to be deposited which is twenty five million, urged the court to divide that sum and apportioned equally into the number of the accused persons in order to enable the accused persons to deposit a total sum of twenty five million shillings, i.e. five million for each accused person. However, the learned counsels for the applicants called upon this court to consider that applicants are ordinary employees who have no means of raising a sum of five million shillings in order to meet the requirement of depositing cash sum, and the court should in the alternative consider

another method of admitting the applicants to bail as the applicants have reliable sureties. Moreover, the counsels further asserted that, a requirement of one to deposit the stated sum as is provided under section 36(4) e of Cap 200, is a stringent condition and hence unconstitutional because the guilt of the applicant is yet to be determined. As such, the Counsels asked the court to construe strictly section 36(4) e of Cap 200, and grant bail to the applicants

On the other hand, Mr Mauggo the learned State Attorney for the respondent did not resist the application and supported the fact that the offence under which the applicant is charged is bailable. However, the State Counsel, on the contrary contended that the conditions for granting bail in the case are a creature of statute calling for mandatory compliance thereto.

I have considered the affidavit in support of the application and the oral submission of the learned Counsels. Firstly, I must state that the matter before me is an application for bail and not anything to do with determining the constitutionality of section 36(4) e Of Cap 200. Furthermore, if that was the case then this does not fall within my province. If the applicants feel that section 36(4) e Of Cap 200 contravenes their basic rights under the Constitution of the United Republic of Tanzania, 1977, then they should petition for the same in the forum and manner provided under The Basic Rights and Duties Enforcement Act Cap 3.

In this application, the applicants are amongst five accused persons who are jointly charged with of an offence causing a loss of tshs. 50,000,000/= to Tanzania Electric Supplies Company. The fifth person has filed application No 22 of 2007 seeking for bail. Section 36(1) e of the Economic and Organised Crime Control Act Cap 200, provides inter alia a condition for admitting a person to bail and it states:

The Court shall not admit to bail if, the offence to which the person is charged involves property whose value exceeds ten million shillings, unless that person pays cash deposit equivalent to half the value of the property, and the rest is secured by execution of a bond

Thus, in terms charge facing the applicants and another person, the sum required to be deposited is Tshs 25,000,000/= being one of the conditions for admitting the applicants to bail. However, it is evident that each applicant, in Economic Case No 3 of 2007, is not separately charged with the stated offence but rather the five are jointly and together charged with an offence causing a loss of 50,000,000/= to Tanzania Electric Supplies Company. As such, considering that in the said Economic case there are five accused persons who are all jointly charged with a single offence, it is not fair to order every applicant, to deposit in court a sum of 25,000,000/=. If the each applicant was separately charged with the said offence, then certainly it would have been just for every applicant to be required all alone to deposit

25,000,000/=. Therefore for the sake of fairness, it is pertinent to divide that sum into the number of the accused persons because according to the particulars of the offence they are presumed to have equally contributed to the loss of 50,000,000/= against Tanzania Electric Supplies Company.

In the upshot of the aforesaid, and considering that the offence which the applicants are charged with is a bailable offence subject to conditions set out under section 36(4) e of the Economic and Organised Crime Control Act Cap 200, and the fact that the Respondent does not resist the application, this court grants bail to the applicant on the following conditions:

- a) Every applicant to deposit in this court a cash sum of Tshs.5,000,000/=(five million)
- b) Every applicant to furnish a bail bond of Tshs. 2,500,000/= (two million and five hundred thousand) with two sureties each, one of whom must produce a title deed of immovable property, situated in Moshi Municipality.
- c) Every applicant is ordered to appear in the Resident Magistrate Court of Moshi on specified dates and times.
- d) Every Applicant is ordered to surrender in this court the travelling documents if any, with immediate effect.

- e) Every applicant is not allowed to travel outside the Region of Kilimanjaro without prior permission of the Principal Resident Magistrate in Kilimanjaro.

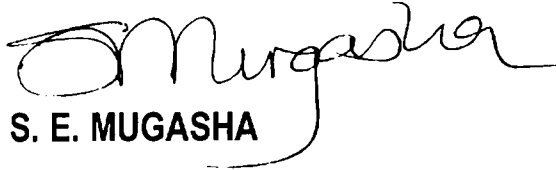
The Sureties will be approved by the District Registrar.

S. E. MUGASHA

JUDGE

6/11/2007

Ruling delivered in the presence of the applicants Mr. A. Shayo and Mr. Urio learned Counsels for the appellants and Mr. Maugo, learned State Counsel for the Respondent.



S. E. MUGASHA

JUDGE

6/11/2007