

IN THE HIGH COURT OF TANZANIA
THE CORRUPTION AND ECONOMIC CRIMES DIVISION
AT DAR ES SALAAM

MISC. ECONOMIC APPLICATION NO. 02 OF 2016

(Originating from Economic Crime Case No. 56 of 2016 Resident Magistrate Court of Dar es Salaam at Kisutu)

FRED RAPHAEL ILOMO

Versus

Republic

Date of last Order 19/12/2016
Date of Ruling 19/12/2016

RULING

W.B.KOROSSO, J

Before this Court is an application filed vide a chamber summons, supported by an affidavit sworn by the applicant Fred Raphael Ilomo. The application is filed pursuant to Section 29(4) (d) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 seeking for this Court to be pleased to grant bail to the applicant pending the determination of the committal proceedings and subject to the committal proceedings pending trial of the said economic crime case and for any orders that this Court shall deem fit to give.

At the hearing of the application the applicant was represented by Ms. Rehema A. Mgovano and Mr. Hekima Mwasiku learned Advocates and the Respondent Republic was represented by Mr. Vitalis Timon, Learned Principal State Attorney assisted by Mr. Mchungahela, Learned State Attorney. The appeal was argued by oral submissions.

We find it relevant to share some background to the matter, that is, on the 23rd of November 2016, the applicant was charged with two others on two counts in Economic Case No. 56 of 2016, the 1st Count being that of interfering with Property used for Purpose of Providing Necessary Service contrary to Paragraph 20(1), (2)(b) and 3(a) of the First Schedule to and Section 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 and Occasioning Loss to a Specified Authority Contrary to Paragraph 10(1) of the First Schedule to and section 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap 200 RE 2002.

The applicants counsel, in her submissions in support of the application pleaded for the Court to adopt the contents of the affidavit supporting the application so that it becomes part of their submissions, and averred that the Court was vested with jurisdiction to entertain and determine the application. On the other hand, on the same issue of the jurisdiction of the Court to determine the application, the Learned Principal State Attorney, submitting on behalf of the Respondent Republic was of similar views to those expressed by the applicants counsel. This Court upon consideration of the submissions of both parties and having considered the provision of Section 29(4)(d) of the Economic and Organized Control Act, Cap 200 RE 2002, finds no reason to differ with the stance of both counsels on the fact that this Court has jurisdiction to determine the application. The said section reads:

29(4) "After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purposes of this section the power to hear bail applications and grant bail–

(d) in all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court".

Having held that this Court has jurisdiction to determine the application this Court proceeds to consider the merit of the application. The applicants counsel submitted that this Court should admit the applicant to bail because the offences for which he faces charges are bailable and that the applicant will be available to appear in Court during hearing or any other matter related to the offence charged. Also that the applicant has reliable sureties and that the applicant has never been arraigned or charged with any other offence prior to the one he faces nor has he ever jumped bail. The applicant averred further that he will be ready to comply with any bail terms and conditions provided by the Court.

On the other side, the Respondent Republic waived their right to file a counter affidavit for reasons that they were not in dispute with the facts as stated in the affidavit. In their oral submissions the respondents avowed that they do not object to the bail application since the offences which the applicant is charged with are bailable and thus conceding to the applicants counsel submissions. Mr. Vitalis Timon, Principal State Attorney submitted and prayed to the Court when considering the Conditions and terms of bail if it pleases to grant bail to the applicant to bear in mind the mandatory requirements as provided under section 36(5) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 as amended by Act No. 3 of 2016, whereby the applicant is required to deposit half of the amount involved in the charge facing the applicant/accused or property equivalent to half of the amount involve in the charge.

It should be understood that the offences the applicant is charged with are bailable offences as averred to by both counsels, there being no legal provision prohibiting

the granting of bail pending trial. That being the case it should also be understood that, in such cases, the Court in consideration of such applications is expected to exercise its discretion judiciously taking into consideration all important factors relating to granting of bail. The discretionary powers involved in the process of granting or refusing bail is a process in which the court in a free, wise and independent mind considers the relevant law, principles, rules and all the circumstances surrounding the case at hand to reach at the right decision that guarantees a proper and just end of the course of justice.

The individual right to personal freedom on one hand and the need to protect the interests of the society at large within legal, social, economic and political environment of the society on the other. There are other factors to be considered in such a process but most of the time they depend on the particular case and circumstances but the common ones include the seriousness of the offence, the severity of punishment involved, how reliable is the accused and his or her sureties, his or her residence or domicile, how long has he/she been in custody, his/her age, the nature of evidence in support of the charge if hearing has started etc.

In the case of *Bhagwanji Kakubhai vs. R*, 1 TLR 144, it was held that the test applied in such a judicial exercise was whether the granting of the application will be detrimental to the interests of justice, good order and the keeping of public peace. Deciding on whether to grant or refuse bail to an accused person is therefore an exercise of balancing and deciding between two competing claims. The understanding being that interests of justice require that there will be a fair trial that the applicants (accused person's) freedom is not unjustifiably denied and that if released on bail the applicants will not jump bail or interfere with the police investigations or witnesses. On the other hand interests of State being that public

peace and good order require that while on bail the accused person will not commit other offences, cause terror or breach peace and tranquility.

The question before this Court is therefore whether in the present application there is any evidence to believe that if the application is granted public interests will be jeopardized and whether there are any solid reasons for denying the applicant his constitutional right to liberty? The Respondent Republic has not objected to the application. It suffices that as alluded to in various cases, a decision to grant or refuse bail depends on many factors. They include the gravity of the offence charged, and also a provision of law can prohibit grant of bail. The Court also finds that, since bail is open against the offence for which the applicants are charged with and the objection raised not providing any plausible reasons to deny bail to the applicants. In the premised, it is hereby held that Bail pending the determination of committal proceedings and henceforth pending trial is therefore granted to the applicant as prayed.

After granting bail to the applicant as pleaded we proceed to consider the conditions and terms of granted bail. In determination of corresponding conditions the Court is to be guided by the seriousness of the offence and conditions that will ensure availability of the applicants for attendance at the hearing on the dates set. The conditions are fixed by the Court in the exercise of its discretion or by the law with a view to ensuring that the accused person appears in Court for his trial. *"The guiding principle being that the conditions have to be reasonable, even where the Court is exercising its discretion"*.

The Court is also to be guided by the Law as submitted by the learned Principal State Attorney for the Respondent Republic. The bail conditions are to comply with section 36(5) of the Economic and Organized Crime Control Act, where the law provides for mandatory bail conditions and terms such as, for an applicant to

deposit cash half the amount of the actual money or property equivalent in value to half the amount of the amount stated in the charge.

In the present case the amount in the charge in Economic Crime Case No. 56 of 2016 is 17,826,000/-. Half the amount of is 8,913,000/-.

1. Therefore the applicant should deposit cash or properties worth Tshs. 8,913,000/-

2. The applicant to produce two(2) reliable sureties whereby each one is to execute a bond of Tshs. 5,000,000/- and one of the said sureties to be an employee of the Government or its institutions.

3. Each applicant to surrender their passports and other travelling documents at the Kisumu RMs Court.

4. The applicant to appear before the Court where the current proceedings are held on a specified time and date as scheduled by the Court where his matter is proceeding.

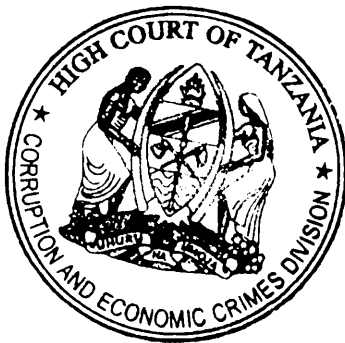
5. The applicant is restricted from moving out of the jurisdiction of the Resident Magistrate's Court Dar es Salaam without permission of the Resident Magistrate Incharge Dar es Salaam.

6. Verification and scrutiny of the bond documents for the sureties and bond documents shall be executed by the Resident Magistrate Incharge Dar es Salaam at Kisumu. Ordered

Ordered.

Winfrida B. Korosso
Judge
19th December 2016

Ruling delivered in chambers this day 19th December 2016 in the presence of Ms. Rehema Mgovano and Mr Hekima Mwasiku learned counsels for the applicant and Mr. Timon Vitalis, Learned Principal State Attorney and Mr. Mchungahela learned State Attorney for the Respondent Republic and the applicant Fred Raphael Ilomo



Winfrida B. Korosso

Judge

19th December 2016