

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 100. OF 2019

(Originating from Dar es Salaam Resident Magistrate Court

Economic Case No. 30 of 2019)

SAADA AHMED ULEDI.....1ST APPLICANT

MAFTAHA BAILA SHABANI.....2ND APPLICANT

HESHIMA KIMWAGA ALLY.....3RD APPLICANT

SHAMBA SHABANI BAILA.....4TH APPLICANT

VERSUS

THE REPUBLIC.....DEFENDANT

RULING

Date of Last Order: 19/09/2019

Date of Ruling: 17/10/2019

MLYAMBINA, J.

The application before the Court is for bail. It is made under *Section 36 (1) of the Economic and Organized Crime Control Act Cap 200 (R.E 2002)*. The application is supported with the joint affidavit of the applicants. Paragraph 2-6 of the supporting joint affidavit reads:

"2. That we are all one family members and that the 1st applicant is the wife of 4th applicant, the 2nd applicant is the son of the 4th applicant, the 3rd applicant is the daughter of

the 4th applicant and the 4th applicant is the husband of the 1st applicant and the head of the family.

3. That, the applicants were arrested while in their car at Kitunda Makaburini- Ilala District on 30th March, 2019 and since then they were remanded at Mabatini Police Station in Kinondoni District.

4. That, on 18th April we were brought to Kisutu RMS Court where we were charged with offences as per charge sheet annexed here with as A and we were denied bail because the court had no jurisdiction to grant the same.

5. That we categorically deny any involvement in the offences we stand charged with.

6. That we have reliable sureties who are ready to sign any bond and abide to any conditions that this Hon. Court may be pleased to order pending trial of the main case at Resident Court at Kisutu..."

In his submission, counsel Sigano Antony for the applicants emphasized that this Hon. Court has vested jurisdiction to admit the applicants to bail when the matter is been tried at Kisutu RM'S Court. Counsel Antony Sigano submitted so in terms of *Section 36 (1) of the Economic and Organized Crime Control Act Cap 200 (R.E*

2002) (supra) which categorically, in his view, empowers this hon court to consider bail application for economic organized charges. Counsel Antony Sigano told the Court that, the applicants are charged with four counts. All charges are bailable. To buttress such position, Counsel Antony Sigano cited the case of **James Burchard Rugemalira v. R** Criminal Appeal No. 391 of 2017 CAT at Dar es Salaam at page 27-28.

Counsel Antony Sigano went on to submit that; what has been said in *James case* is different from the instant case. The count of money laundering was drawn under the Criminal Procedure Act Cap 20. It is different from this case in which the count of money laundering (4th count) has been drawn under *The Economic and Organized Crime Control Act Cap 200 (R.E 2002) Cap 200* of which *Section 36 (1) of the same Act* vested this Hon. Court the jurisdiction to admit the accused to bail.

It was the submission of Counsel Antony Sigano that, as reiterated under para 6 of the joint affidavit, the applicants have reliable sureties who are ready to abide with the condition that this honorable court will set forth. The applicants are charged of money laundering of TZS 4,487,000/- Moreover, no records are in existence to the effect that the applicants were previously charged with similar offence or jumped bail, hence they should be denied

bail as stated in *Section 36 (4) of The Economic and Organized Crime Control Act Cap 200 (R.E 2002)*.

Counsel Antony Sigano maintained that, the amount involved is too minimal, to the extent of holding the applicants in prison. The applicant's counsel Antony Sigano winded up his submission by stating that, the applicants are Tanzanian by birth, they are working for gain at Kitunda Dar es Salaam. They are all of one family. They are a father, mother and issues. The young kids are in trouble at home.

In Reply, Credo Rugaju Senior State Attorney told the Court that, the offences the applicants are charged although are *under The Economic and Organized Crime Control Act Cap 200 (R.E 2002)* but one of the count is money laundering which is unbailable under *Section 148 (5) (a) (v) of the Criminal Procedure Act Cap 20 (R.E 2002)*.

Credo Rugaju invited the Court to go to the charge sheet whereby count four is money laundering contrary to *Section 12 (a) and 13 (a) of Anti Money Laundering Act No. 12 of 2006* read together with *Paragraph 22 of the 1st schedule of The Economic and Organized Crime Control Act Cap 200 (R.E 2002)* as amended by *the Misc. Law Amendment Act No. 3 of 2016*. The law is clear as already noted above. There is no act which has shown that money

laundering is bailable. Credo Rugaju distinguished the cited case of *James Rugemalira* in that, money laundering is still governed by Criminal Procedure Act as per page 28 of the decision.

In rejoinder, Antony Sigano, Advocate for the applicants, submitted that the Court of Appeal in *James case* has distinguished clearly that, if the count of money laundering has been drawn under Criminal Procedure Act Cap 20, no bail. However, the case before the Court, the count of money laundering has been drawn under *The Economic and Organized Crime Control Act Cap 200 (R.E 2002)*. The fourth count is contrary to *Section 12 of The Money Laundering Act* read together with *Paragraph 22 of the First Schedule of The Economic and Organized Crime Control Act Cap 200 (R.E 2002) as amended by Written Laws Misc. Amendment Act No. 3 of 2016*.

Counsel Antony Sigano told the Court that they never cited *Section 148 (5) (v) of Criminal Procedure Act* because their application is made under *Section 36 (1) of the Economic and Organized Crime Control Act Cap 200 (R.E 2002)*. Bail is a constitutional right under *Article 13 (6) (b) of the Constitution of the United Republic of Tanzania, 1977*.

I have deliberately considered the submissions of both parties. With regard that, the offences charged are bailable, I wish to refer

to the cited provisions of *Section 36(1) of the Economic and Organized Crime Control Act, [Cap 200 R. E. 2002]* as provided hereunder;

"36 (1) after a person is charged but before he is convicted by the Court, the Court may on its own motion or upon an application made by the accused person, subject to the following provisions of this section, admit the accused person to bail."

From the afore cited *Section 36 (1) (supra)*, it is clear that upon application by the accused or the Court suo motto may grant an accused with bail. However, *Section 148 (5) (a) (v) of the Criminal Procedure Act 20 (R.E 2002)* bars Courts to grant bail on certain offences. It provides:

(5) A police officer in charge of a police station or a court before whom an accused person is brought or appears, shall not admit that person to bail if-

(a) that person is charged with

(v) money laundering contrary to ant money laundering act, 2006.

Though there is a presumption of innocence of a man until the contrary is proved and that a man while awaiting trial is, as of a matter of right, entitled to bail, the provisions of *Section 148 (5) (a) (v) of the Criminal Procedure Act 20 (R.E 2002)* do not entitle

the applicants with the right to bail as far as the charged offence is concerned.

In the circumstances, the application for bail is not granted. Order accordingly.



Y. J. MLYAMBINA

JUDGE

17/10/2019

Dated and delivered on 17th day of October, 2019 in the presence of learned Counsel Sigano M. Antony for the Applicants and Senior State Attorney Credo Rugaju for the Respondent.



Y. J. MLYAMBINA

JUDGE

17/10/2019

