

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

**AT DAR ES SALAAM**

**MISC. ECONOMIC CAUSE NO. 16 OF 2019**

*(Originating from Economic Crime Case No. 72 of 2017 at the Resident Magistrate's Court of  
Dar es Salaam at Kisutu before Hon. Salum Ally -SRM)*

**DONATHA PETER KASSOLO.....1<sup>ST</sup> APPLICANT**  
**ZHANG ZHILAI.....2<sup>ND</sup> APPLICANT**  
**VERSUS**  
**THE REPUBLIC.....RESPONDENT**

**RULING**

***Date of last Order: 03/10/2019***

***Date of Ruling: 24/10/2019***

**MLYAMBINA, J.**

By way of chamber summons made under the provisions of  
***Section 29 (4) (d) of The Economic and Organized Crime  
Control Act Cap 200 (R.E 2002) as amended by Act No. 3 of  
2016***, the Applicants prayed:

- i. That, the Applicants be granted bail pending trial.
- ii. That, the Applicants have reliable sureties who are ready and willing to receive and adhere (comply) to all bail conditions which may be imposed.
- iii. Incidental orders as may necessary be made.

The application has been supported with an affidavit sworn by Nehemiah Geoffrey Nkoko, an advocate of the Applicants.

It was evident from paragraph 2 of the affidavit that the Applicants stand charged together before the Resident Magistrate Court of Dar es Salaam at Kisutu with a total of five counts including on Leading Organized Crime and four counts of unlawful possession of Government Trophies. The counts charged are bailable but falls under ***The Economic and Organized Crime Control Act Cap 200 (R.E 2002)*** and the alleged value of the trophies in total is TZS 792,272,000/= in Economic Crime Case No. 72 of 2017.

It is undisputed that the above-mentioned value dis-empowers the RM'S Court of Dar es Salaam at Kisutu to try the offence and to entertain any bail application.

It is further undisputed that the High Court of Tanzania Corruption and Economic Crimes Division at Dar es salaam lacks jurisdiction as it has not been vested with the powers to deal with petition for bail in all economic offences where the value of any property involved is ten million shillings or more.

Both parties are not contesting that the Applicants have a right to apply for bail for the reason of exercising their constitutional rights of personal freedom, freedom of movement and presumption of

innocence. As a general rule, unreasonable denial of bail would violate the provisions of Article 15 (2) (a) of The Constitution of the United Republic of Tanzania as it was decided in the Case of **Director of public prosecutions v. Daudi Pete** (1993) T.L.R. 22.

The Respondent objected the application through the Counter Affidavit of Cecilia Sebastian Shelly. Under paragraph 4 of the Counter Affidavit, it was testified that the economic offence with which the Applicants are charged with, relates to 5 pieces of elephant tusks valued at USD 45,000/= Equivalent to Tanzania Shillings Fifty Eight Million and Five Hundred Thousand (58,500,000, 369/= articles made from elephant tusks, value at USD 240,000/= Equivalent to Tanzania Shillings Three Hundred And Twelve Million (Tshs. 312,000,000/= 60 claws and 11 teeth of lion valued at USD 19,6000 Equivalent to Tanzania Shillings Twenty-Five Million Four Hundred and Eight Thousand (25, 480,000/=) and 90 articles made from turtle shells valued at USD 120 Equivalent to Tanzania Shillings One Hundred and Fifty Six Thousands Tshs. 156,000/=.

Cecilia Sebastian shelly went on to counter testify that the 1<sup>st</sup> applicant is suffering from mental health. Thus, there is a need to be under safe custody to ensure his availability during trial and the

2<sup>nd</sup> Applicant is a Foreigner hence there is no assurance of his availability during trial.

Under Paragraph 9, Cecilia Sebastian Shelly sworn that; both 1<sup>st</sup> and 2<sup>nd</sup> Applicants have previously been charged with the same offence and granted bail at Resident Magistrate Court of Kisumu on Economic Crime Case Number 10/02/2016 did fail to comply with the bail condition (absconded).

It was further counter testified by Cecilia Sebastian Shelly that the offence which the Applicants are charged with is serious and carry a severe punishment including custodial sentence, as they destroyed natural resources and endangered wildlife and natural heritage of the Nation.

At a hearing, counsel Nehemia Nkonko told the Court *inter alia* that all the Applicants are Dar es Salaam Residents. They can be available at any time in case they are needed at Kisumu. Counsel Nehemia submitted that; the 2<sup>nd</sup> Applicant though a Chinese, he is the husband of the 1<sup>st</sup> Applicant. To buttress his averment, counsel Nehemia Nkonko cited the decision of this Court in Criminal Application No. 181 of 2019 between **Robert Simon Kisenha and 4 Others v. The Republic** which cited with approval the decision of the same Court in the case of **Kishor D. Shapriya v.**

**R** by holding that bail cannot discriminate a person basing on nationality. Counsel Nehemia, therefore, prayed the Court to grant bail under condition set on **Section 36 (6) of Cap 200 (R.E 2002)**.

On the issue of jumping bail, counsel Nehemia Nkoko denied it. Nehemia told the Court that the Applicants never jumped bail. It was further submitted by counsel Nehemia that bail will help the 1<sup>st</sup> Applicant to get treatment.

In reply, Senior State Attorney Cecilia Sebastian Shelly admitted that the charged offence is bailabe because it is not listed to the unbailable offences. But she emphasized that conditions set under **Section 36 (4) (b) of Cap 200** (*supra*) has to be taken into consideration. If the Applicants jumped bail, cannot get bail. That, the Applicants herein jumped bail and they were re-arrested, for that reason, the Applicants are not faithful. They cannot be trusted.

Ms. Cecilia Shelly added that, one of the Applicants is a Foreigner. There is no proof as to where he can be traced when needed. The 1<sup>st</sup> Applicant have mental problem. She cannot be easily traced. Thus, the issue of getting treatment is not a reason at all as she can be treated at hospital.

Having considered fully the evidence in affidavits and the submissions of both counsel, I have observed that both parties do not dispute that the changed offence is bailable in terms of the provisions of ***Section 36 (5) (a) (b) (c) (d) and 36 (6) of Cap 200 (R.E.2002) (Supra)***.

Indeed, as I held in the cited case of Kishor (*supra*) bail cannot be granted or refused on Nationality basis.

***The Universal Declaration of Human Rights, 1948*** reaffirms that all human beings are born free and equal in dignity and rights. **Article 12 (1) and (2) of the Constitution of the United Republic of Tanzania, 1977** provides for equality of human beings.

Article 13 (1) (2) (3) (4) (5) and (6) (a) (e) of The Constitution of Tanzania (*supra*) guarantees for equality before the law. Indeed, Article 15 (1) (2) (a) and (b) of The Constitution (*supra*) guarantees right to personal freedom. It follows therefore that when persons are subjected before the law, each has to be treated equally as there is no superior race under the law.

There is an allegation that the 1<sup>st</sup> Applicant has mental health problem. There is even a letter from the Prison Department. However, that cannot be a proof of health status of a person.

It is only a specialist on mental health who can confirm to the Court on mental health of a person.

Needless the above observation, there are allegations that the Applicants are Dar es Salaam Residents but there is nothing in record to prove such allegations.

It is in record that the Applicants jumped bail when they were previously been charged with the same offence at the Resident Magistrate Court at Kisutu on Economic Crime Case No. 10/2012 ***Section 36 (4) (b) of The Economic and Organized Crime Control Act, Cap 200*** (supra) provides:

4. The Court shall not admit any person to bail if:

(b) It appears to it that the accused person has previously been granted bail by a Court and failed to comply with the conditions of the bail or absconded.

Given that it is the mandatory requirement of the law for a person who absconds bail should not be granted bail, and given that the

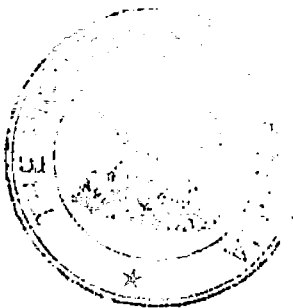
Applicants are charged with a serious offence, I find though the charged offence is bailable, the Applicants are not entitled to bail.

In the premises of the foregoing, the application is dismissed for being devoid of merits.



**Y. J. MLYAMBINA**  
**JUDGE**  
**24/10/2019**

Ruling delivered and dated 24<sup>th</sup> October, 2019 in the presence of counsel Nehemia Nkoko for the Applicants and Senior State Attorney Cecilia Shelly for the Respondent.



**Y. J. MLYAMBINA**  
**JUDGE**  
**24/10/2019**