

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISCELLANEOUS CRIMINAL APPLICATIONS NO. 244 OF 2019**

(Originating from Economic Case No. 26 of 2018 filed in the Resident Magistrate's Court  
of Kisutu at Kisutu)

**Joseph Paulo Manya .....APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**RULING**

*Date of Last Order: 04.12.2019*

*Date of Ruling: 05.12.2019*

**Ebrahim, J:**

This is an application for bail pending trial filed under the certificate of urgency. The application is made under **Section 36(1) of the Economic and Organised Crimes Control Act, Cap. 200 R.E 2002 (the Act)** and **Section 148(1) (5) of the Criminal Procedure Act, Cap 20 RE 2002**. The application is supported by an affidavit of Dickson Matataf

Counsel for the applicant. The applicant is praying to be granted bail in respect of Economic Case No. 26 of 2018 pending at the Resident Magistrate's Court of Dar Es Salaam at Kisutu .

Brief background of this application as could be discerned from the charge sheet appended with the application is that the applicant together with other five other accused persons have been arraigned in the Resident Magistrate's Court at Kisutu charged with three counts. The first count is **Conspiracy to Commit an Offence** contrary to **Section 384 of the Penal Code, Cap 16 RE 2002**. The second count is **Stealing** contrary to **Section 258 and 265 of the Penal Code Cap 16 RE 2002**. The third count is occasioning loss to specified authority contrary to paragraph 10(1) of the first schedule and section 57(1) and 60 of the Economic and Organized Crime Control Act, Cap 200 RE 2002. It is alleged that the applicant and his co-accused accused persons on 8<sup>th</sup> day of September 2015 at RTD Salasala Kunduchi, Dar Es Salaam stole copper X valued at USD 400,000/- the property of Tanzania Broadcasting Corporation. Accordingly by their failure to discharge their duty caused in a reasonable manner caused TBC to suffer pecuniary loss of USD 400,000/

At the hearing of this application, the applicant was represented by Mr. Dickson Matata learned advocate; and the respondent had the services of Ms. Deborah Mcharo, learned State Attorney.

The Respondent by consent agreed to go away with the filing of a counter affidavit and did not object the application.

Following the non-objection of the application by the Republic, advocate Matata had nothing to add in support of the application.

Mr. Matata alluded at para 5 of the affidavit that the applicant is charged with bailable offences and this court has jurisdiction to entertain it and that the applicant's state of health is unstable. He further averred at para 6 that the applicant has reliable sureties who shall ensure his attendance to Court and that he has permanent residence at Mbezi Beach, Kinondoni District within Dar Es Salaam.

Indeed bail is a mechanism designed to ensure that a person who is subject to the strictures of the law stays out of confinement and his freedom is guaranteed while the process of inquiry into his/her liability in the criminal process is being investigated and determined. The institution of bail, therefore, falls on the positive side of the principle of presumption

of innocence – see the cited case of **The DPP vs Bashir Waziri and Another**, Criminal Appeal No. 168/2012.

The offences which the applicant is charged with have the value of USD 400,000/-. Thus, since the value of the property involved as outlined in the charge sheet is more than Tshs. 10million and the matter is in Kisumu Resident Magistrate Court where the trial has not commenced; and in the absence of consent conferring jurisdiction to that court; in terms of **section 148(1) (5) of Cap 20**, this court can proceed to hear and determine bail application.

Further **Section 36(1) of the Act**, gives this Court mandate either on its own motion or upon application subject to other provisions of the Act to admit an accused person to bail. **Section 36 (5) and (6) of the same Act** provides for bail conditions where the court decides to admit an accused person to bail.

That being the position and pursuant to the above provisions of the law; and following the fact that the respondent did not have any objection to the granting of bail to the applicant, I hereby proceed to grant bail to the applicant on the following conditions.

- (1) That the applicant shall deposit in this court a sum of USD 34,000/- in cash (say United States Dollars Thirty Four Thousands only) as there are six accused persons; Or in the alternative, he shall deposit to the custody of the court, a Title Deed of the immovable property to the equivalent amount.
- (2) The applicant shall be required to provide two reliable sureties who shall be required to execute a bond of USD. 15,000/- each (say United States Dollars fifteen thousand only) and shall ensure the applicant's attendance to court.
- (3) The applicant shall be duty bound to appear in Court on all dates that shall be scheduled by the Court in Economic Case No. 26/2018 pending before Kisutu Resident Magistrate's Court.
- (4) That, the applicant shall immediately surrender his passport or any travelling document in his name to Principal Resident Magistrate In Charge at Kisutu RM's Court.
- (5) The applicant shall report to the Principle Resident Magistrate in charge at Kisutu Resident Magistrate's Court on each first Monday of the month.
- (6) The applicant is hereby restricted to move outside the jurisdiction of this Court (High Court) without prior permission of the Principle Resident Magistrate assigned with the case.

- (7) Bail conditions to be ascertained/ verified by the Magistrate at Kisumu RM's court assigned with the case within 24 hours after the issuance of this order.

Accordingly ordered.



A handwritten signature in black ink, appearing to read "R.A. Ebrahim".

**R.A. Ebrahim**

**Judge**

**Dar Es Salaam**

**05.12.2019**