

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

MISC. CRIMINAL APPLICATION NO. 198 OF 2019

(Originating from Economic Case No.46 of 2018 at the Resident Magistrate Court of Dar es Salaam at Kisutu).

ABUBAKARI SAIDI MSAWA @USTAADH.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Last Order: 13.12.2018

Date of Ruling: 19.12.2018

KALUNDE, J.

The applicant, one **ABUBAKARI SAIDI MSAWA**, have been arraigned before the Resident Magistrate Court of Dar es Salaam at Kisutu in Economic Case No.46 of 2018. His application is made under sections 29(4) and 36(1) of the Economic and Organised Crimes Control Act, [Cap. 200 R.E.2002] (EOCCA), supported by affidavit signed by the applicant. The applicant is seeking bail pending trial in Economic Case No. 46 of 2019 pending at the Resident Magistrate Court of Dar es Salaam at Kisutu.

In the said in Economic Case No.46 of 2018 the applicant have been charged with **unlawful possession of government trophies** contrary

to section 86(1) and (2)(c)(ii) of the Wildlife Conservation Act, No.5 of 2009 read together with paragraph 14 of the First Schedule to, and sections section 57(1) and 60(2) of EOCCA.

At the hearing the applicants were un-represented and appeared in person; and the respondent had the services of Miss. Tuli Helela, learned State Attorney.

Supporting the application, the applicant submitted that he should be granted bail since it was his constitutional right. He alleged that his mother was a widow of sixty four years of age living with two uncles left by the applicants sister who passed on. The applicant submitted that he was a Tanzanian born and raised in Kilimanjaro and as such he should admitted to bail so that he can go to support his mother and the two uncles.

Miss. Helela did not object the application. She noted that the value of the subject matter exceeded ten million and therefore the RMs court at Kisutu could not entertain the matter. Since the offence for which the accused was charged with was bailable, Miss. Helela submitted that this Court had jurisdiction to entertain the matter. However, she reminded us that, should the Court exercise its discretion to grant bail to the applicant, it should be guided by the provisions of section 36 (5) and (6) of EOCCA.

The **Constitution of the United Republic of Tanzania, 1977** Articles 13(6)(b) and 15 guarantees the presumption of innocence until the contrary is proved and the right to individual liberty, respectively. That being the position of law, and mindful of the fact that the respondent did not object to the granting of bail to the applicant, I hereby proceed to grant the orders sought.

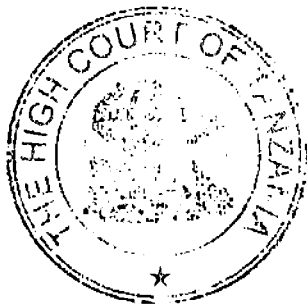
Since the applicant was charged under Cap. 200 R.E 2002, bail conditions are guided by section 36 of the Act. Among other things, the accused person (applicants) is required to pay cash bond or submit to court the security (preferably title deed) whose value is at least half of the value of the property (subject matter in question) and the rest be executed by

promissory bond. According to the copy of charge sheet, the subject matter in question is valued at Tshs. 34,140,000.00, the said amount should be split into half, that is, Tshs. 17,070,000.00 of which can be executed as stated above.

From the aforementioned reasons, I hereby grant bail to the applicant upon fulfilling the following conditions;

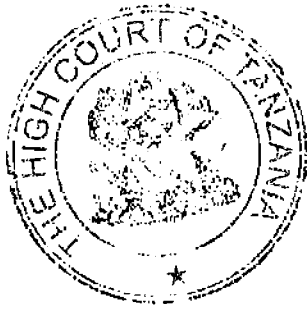
- (1). The applicant shall deposit to the trial court a sum of Tshs. 17,070,000.00 in cash or in the alternative, he shall deposit to the custody of the trial court, a title deed of an immovable property to the equivalent amount;
- (2). The applicant should have two credible and reliable sureties; with fixed abode within the jurisdiction of the trial court to be introduced by ward leaders. The two sureties shall execute a bail bond in the sum of Tshs. 8,535,000.00 each;
- (3). The applicant shall immediately surrender his passport or any travelling documents in his name to Principal Resident Magistrate In Charge at Kisutu Resident Magistrate's Court;
- (4). The applicant shall be duty bound to appear in court on all dates that shall be scheduled by the court in Economic Case No.46 of 2018 pending before Kisutu Resident Magistrate's Court;
- (5). The applicant is hereby restricted to move outside the jurisdiction of the trial court without a prior permission of the Principal Resident Magistrate In Charge at Kisutu Resident Magistrate's Court; and
- (6). Bail conditions to be ascertained/verified by the Magistrate at Kisutu RM's Court assigned with the case.


DATED at DAR ES SALAAM this 19th December, 2019.




S.M. KALUNDE
JUDGE

Court: Ruling delivered in chambers in the presence of the Applicant in person and Candid Nasua, learned State Attorney for the Respondent.




S.M. Kalunde
JUDGE
19/12/2019