

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

**MISC. CRIMINAL APPLICATION NO. 211 AND NO. 227 OF 2019**

(Original Economic Case No.113 of 2019 at the Resident Magistrate's Court of Dar es Salaam at Kisutu).

**AUGUSTINO CHRISTOPHER @NDEKEJA.....1<sup>ST</sup> APPLICANT**  
**JUMANNE OMARI @MUSA.....2<sup>ND</sup> APPLICANT**  
**HUSI JUMA @ATHUMANI.....3<sup>RD</sup> APPLICANT**  
**YUSUF RASHID DAUDI.....4<sup>TH</sup> APPLICANT**

**VERSUS**

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

**RULING**

Date of Last Order: 12.12.2018

Date of Ruling: 17.12.2018

**KALUNDE, J.**

The applicants have been arraigned before the Resident Magistrate's Court of Dar es Salaam at Kisutu in Economic Case No.113 of 2019. Their application is made under sections 29(4) and 36(1) of the Economic and Organised Crimes Control Act, [Cap. 200 R.E.2002] (EOCCA). Each of the four applicants signed an affidavit in support of the application. The

S.M.Kalunde, J

applicants are seeking bail pending trial in Economic Case No.113 of 2019 pending at the Resident Magistrate's Court of Dar es Salaam at Kisutu.

In the said in Economic Case No.113 of 2019 the applicants have been charged with three counts. The first count is **conspiracy to commit and offence** contrary to section 384 of the Penal Code, [CAP. 16 R.E. 2002]; Second count **interfering with property used for the purpose of necessary service** contrary to paragraph 20(1) and (2)(a) of the First Schedule to and section 57(1) and 60(2) of EOCCA; and the third count is **occasioning loss to a specified authority** contrary to paragraph 10(1) of the First Schedule to and 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 Mr. Ramadhani Kalinga, learned State Attorney.

At the commencement of the hearing of Misc. Criminal Application No. 211 of 2019 Mr. Kalinga requested that the application be consolidated with Misc. Criminal Application No. 227 of 2019 so that the two applications can be attended together since they relate to bail application in the same case and they were, in fact, similar in substance. The applicants did not object. The two applications were consolidated leading to the present application.

In support of their application all the applicants adopted the grounds as set out in their affidavits, supporting the application. They prayed the Court to release them on bail pending trial in Economic Case No.113 of 2019 pending at the Resident Magistrate Court of Dar es Salaam at Kisutu.

The respondent, by consent, agreed to do away with the requirement to file a counter affidavit and did not object the application stating that all the offences for which the applicants are charged with are bailable. He further submitted that should the Court grant bail to the applicants, it should be guided by the provisions of section 36 of EOCCA and that verification of the bail conditions should be done by the trial court.

I am mindful of Article 13(6) (b) and Article 15 of **the Constitution of the United Republic of Tanzania, 1977** the later speaks of the presumption of innocence while the later speaks of the individual liberty. The applicants still enjoys the presumption of innocence until proven otherwise as was decided in the case of **Patel v R [1978] HCD** in which **Biron J**; (as he then was) held *inter alia* that:-

***"...whilst awaiting trial is as of right entitled to bail, as there is presumption of innocence until contrary proved..." (emphasis mine)***

In the case of **Douglas Lyimo vs. R. [1978] TLR** in **Mweisumo, J**; (as he then was) it's held was:-

***"...Bail is a right and not privilege to an accused person..." (Emphasis supplied)***

Mr. Kalinga invited the Court to consider the conditions set by section 36 of the EOCCA which, *inter alia*, requires the accused person (applicants) 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. 3,712,800.00/=, the said amount should be split into half i.e Tshs. 1,856,400/= of which can be executed as stated above. Applying the principle of sharing as was clearly demonstrated by the Court of Appeal in **Silvester Hillu Dawi & Stephen Leons Mwambene v The Director of Public Prosecutions, Criminal Appeal No. 250 of 2006 (at Dar es Salaam), (Unreported)**, the amount due for each of the applicant is Tshs. 464,100.00/=.

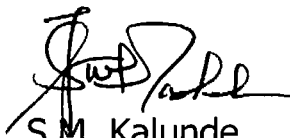
From the aforementioned reasons I hereby grant bail to the applicants upon fulfilling the following conditions;

- (1). Each applicant shall deposit in the trial court a sum of Tshs. 464,100.00/= 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). Each applicant should have two credible and reliable sureties; with fixed abode within the jurisdiction of the trial court;
- (3). Each of the two sureties shall execute a bail bond in the sum of Tshs. 232,050/=-;
- (4). Each applicant shall immediately surrender his passport or any travelling documents in his name to Principal Resident Magistrate In Charge at Kisumu Resident Magistrate's Court;

- (5). Each applicant shall be duty bound to appear in court on all dates that shall be scheduled by the court in Economic Case No.113 of 2019 pending before 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.

Order accordingly.

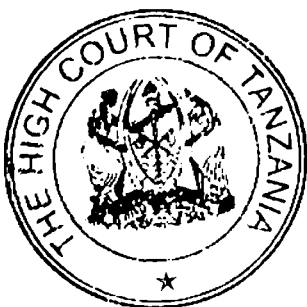


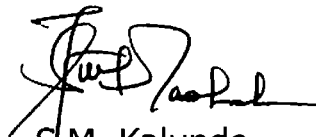
  
S.M. Kalunde

**JUDGE**

**17/12/2019**

**Court:** Ruling delivered in chambers in the presence of the Applicants in person and Ramadhani Kalinga, learned State Attorney for the Respondent.



  
S.M. Kalunde

**JUDGE**

**17/12/2019**