

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISC. CRIMINAL APPLICATION NO. 63 OF 2018

In the matter of an application for

BAIL PENDING TRIAL

And

In the matter of Economic Case No. 50 of 2018

In the District Court of DODOMA District at DODOMA

GEOFREY JOSEPH MWALUKO.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

14/01/2019 & 15/01/2019

KITUSI, J.

Geofrey Joseph Mwaluko, the applicant is an accused person in Economic Case No. 50 of 2018 pending before the District Court of Dodoma according to a copy of the charge sheet that has been annexed. He has come to this court to pray for bail arguing, both in his affidavit and

in the submissions made by Mr Fred Kalonga, learned advocate, representing him, that the offence is bailable.

The application has been preferred under section 148 (1), (3) and 148(5) (a) (ii) and (iii) of the Criminal Procedure Act, CAP 20, hereafter, the CPA, section 29(4) (d) and 36(1) of the Economic and Organized Crime Control Act, CAP 200.

Again both the affidavit and the counsel's submissions rationalize the filing of this application at this court as being that the amount of money involved in the charge facing the applicant is over ten million shillings which strips from the District Court, the jurisdiction to consider an application for bail.

The respondent Republic was represented by Mr Harry Mbogolo learned State Attorney. The counter affidavit that was taken by Morice Cyprian Sarara, a State Attorney, demands strict proof of almost every averment made by the applicant. In his submissions however, Mr Mbogolo brought in a totally new ground for resisting the application, citing the fact that the applicant is likely to interfere with the investigations if admitted to bail.

In the short rejoinder Mr Kalonga attacked the learned State Attorney's submission as an afterthought which had not even been raised in the counter affidavit.

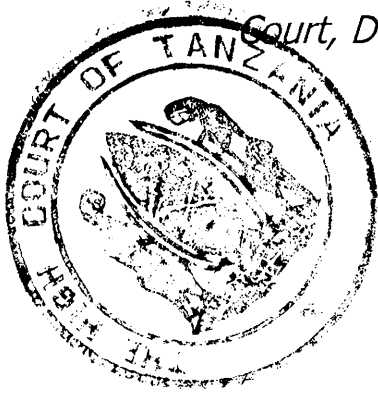
With respect I am quickly in agreement with Mr Kalonga, and this is because, it is a settled position of the law that submissions are not evidence. See **Star System International Company Ltd V. Agatha Cyril Nangawe**, Civil Appeal No. 10 of 2015.

For the purpose of these proceedings, the affidavit and the counter affidavit are the parties respective evidence, therefore any fact not featuring in either of them cannot be smuggled in by way of submissions.

The fact that the offence with which the applicant is being charged is bailable, is a matter of law and I cannot do anything but agree with the applicant's case on that score. The fact that the applicant has a fixed abode within Dodoma Region, Chamwino District is also unchallenged because Mr Mbogolo even tried to use that fact against him. It remains for me to pronounce myself that the applicant has made his case. The application is granted, and the applicant shall be admitted to bail on the following conditions;

- (i) *Two sureties, one with immovable property within Dodoma Region.*
- (ii) *Each of the sureties as well as the applicant to sign a bond of shillings ten million.*
- (iii) *Applicant to surrender to the Regional Crime Officer Dodoma, his travel document and may not travel outside Dodoma without the trial court's prior approval.*

(iv) *Sureties to be approved by the Deputy Registrar, High Court, Dodoma.*




I.P. KITUSI

JUDGE

15/01/2019