

**IN THE HIGH COURT OF TANZANIA
(DARE ES SALAM DISTRICT REGISTY)**

AT DAR ES SALAAM

MISC ECONOMIC APPLICATION NO. 296 OF 2019

**(Originating from Economic Crimes Case No. 110 of
2019 in the Resident Magistrate's Court of Dar es
Salaam at Kisutu)**

- | | |
|---------------------------------------|---------------------------------|
| 1. MICHAEL KIYANGO BUHOLO..... | 1ST APPLICANT |
| 2. RASHID SAID MDOE | 2ND APPLICANT |
| 3. ELIUD PATRICK..... | 3RD APPLICANT |
| 4. LAMECK JOSEPH ALUTE..... | 4TH APPLICANT |
| 5. ADAM KIONGA | 5TH APPLICANT |

VERSUS

THE REPUBLICRESPONDENT

RULING

24th December, 2019

Kisanya, J.

The applicants namely, Michael Kiyango Buholo, Rashid Said Midole, Eliud Patrick, Lameck Joseph Alute and Adam Kionga have been charged with economic crime case pending in the Resident Magistrate's Court of Dar es Salaam at Kisutu (Economic Crime Case No. 110 of 2019) for

committal. Another accused in that case is Yusuph Gerald Sanninga who has not applied for bail.

The charges leveled against all applicants are **conspiracy to commit an offence**, contrary to section 384; **installation of electronic communication equipment without licence**, contrary to section 116(3)(c) of the Electronic and Postal Communication Act, 2010; **operating network facility without a licence**, contrary to section 116(1) of the Electronic and Postal Communication Act, 2010; **fraudulent use of network facilities**, contrary to section 22(a) of the Electronic and Postal Communication Act, 2010 read together with regulation 7(1)(2)(a) of the of the Electronic and Postal Communication (Telecommunication Traffic Monitoring System Act) Regulations, 2013; **use of unapproved electronic equipment connected to communication network service** contrary to section 83(1) and 151(1) of the Electronic and Postal Communication Act, 2010 (for all accused); and **occasioning loss to a specified authority** contrary to paragraph 10(1) of the First Schedule to the Economic and Organized Crime Control Act (Cap. 200 R.E. 2002) as amended (for accused).

Others Offences are **importation of electronic communications equipment without licence** contrary to section 116(3)(c) of the Electronic and Postal Communication Act, 2010 (for the first accused only who is not party to this application); **installation of electronic communication equipment without licence**, 116(3)(c) of the Electronic and Postal Communication Act, 2010 contrary to section 116(3)(c) of the Electronic and Postal Communication Act, 2010 (for the first accused and first Applicant only) and **Offence of money laundering** (for the first accused only, one Yusuph Gerald Saninga).

According to the 8th count of the charge sheet, the amount of loss alleged to have been occasioned by the six accused is **Tanzania Shillings Nine Hundred Sixty Three Million, Five Hundred Eighty Five Thousand (TZS 963, 585,000)**.

Therefore, the applicants have applied for bail pending before trial of the aforementioned case. Their application is made under sections 29(4) and 36(1) of the Economic and Organised Crime Control Act, [Cap. 200 R.E.2002]. There is applicants' joint affidavit in support of the application.

When this application was called for hearing, the applicants appeared in person, unrepresented. The Republic was represented by Adolph Kisima, learned State Attorney. The second applicant one, Rashid Said Midole withdrawn himself from this application on the ground this Court has already admitted him to bail in another application. Therefore, the application proceeded against Michael Kiyango Buholo (1st Respondent), Eliud Patrick (3rd Respondent) Lameck Joseph Alute (4th Respondent) and Adam Kionga (5th Applicant).

The applicants adopted their joint affidavit in their respective submissions and urged this Court to grant them bail. They also stated that they are entitled to bail they are charged with bailable offences. The Republic did not file-counter affidavit. Mr. Adolph Kisimia confirmed that the applicants have been arraigned for bailable offences. However, he reminded this Court to impose conditions in accordance with section 36(5) of the Economic and Organised Crime Control Act, [Cap. 200 R.E.2002]. In their rejoinder, the applicants urged me to give favorable bail conditions on the grounds that they cannot afford to pay cash or submit title deed of immovable with value of half of the amount of money involved in this matter.

It is a settled law that the purpose of arrest and putting the accused in custody is to secure his attendance during the trial and to ensure that he is available to receive and serve sentence if convicted. However, bail is a constitutional right which is based on principle of presumption innocence, right to personal freedom and right to privacy embodied under Articles 13(6) (b), 15 and 16 of the Constitution of the United Republic of Tanzania, 1977 respectively. Therefore, denial to admit an accused person to bail must be justified accordingly.

The Court has discretion to grant bail. In exercising such discretion, it considers the nature of each case, the nature of offence, the amount of money involved and interest of justice. Having considered that the applicants herein are charged with bailable offences and that the Republic has not objected the application for bail, I am of the considered view that this is a fit case for admitting the applicants to bail subject to bail conditions set in accordance with the law.

The bail conditions for an economic offences are prescribed in section 36(5) and (6) of the Economic and Organized Crime Control Act [Cap 200 R.E 2002] which reads:

"(5) Where the Court decides to admit an accused person to bail, it shall impose the following conditions on the bail, namely-

(a) where the offence with which the person is charged involves actual money or property whose value exceeds ten million shillings unless that person deposits cash or other property equivalent to half the amount or value of actual money or property involved and the rest is secured by execution of a bond;

Provided that, where the property to be deposited is immovable, it shall be sufficient to deposit the title deed, or if the title deed is not available such other evidence as is satisfactory to the court in proof of existence of the property; save that this provision shall not apply in the case of police bail;

- (b) appearance by the accused before the Court on a specified date at a specified time and place;*
- (c) surrender by the accused to the police of his passport or any other travel document; and*
- (d) restriction of the movement of the accused to the area of the town, village or other area of his residence.*

(6) The Court may, in addition to the mandatory conditions prescribed in subsection (4) impose any one or more of the following conditions, namely-

- (a) requiring the accused to report at specified intervals to a police station or other authority in his area of residence;*
- (b) requiring the accused to abstain from visiting a particular locality or premises, or association with certain specified persons;*
- (c) any other condition which the Court may deem fit to impose in addition to the preceding conditions,*

which appear to the Court to be likely to result in the appearance of the accused for the trial or resumed trial at the time and place required or as may be necessary in the interest of justice or for the prevention of crime.”

Thus, one of the condition is for the accused to pay cash or submit to court the security whose value is at least half of the value of the property or money involved. In the present application half of the amount involved is **Tanzania Shillings Four Hundred Eighty One Milioni, Seven Hundred Ninety Two Thousand and Five Hundred (Tshs. 481, 792,500).**

Where a case involves more than one persons, the principle of sharing stated by the Court of Appeal in **Silvester Hillu Dawi & Stephen Leons Mwambene v The Director of Public Prosecutions, Criminal Appeal No. 250 of 2006 (Unreported), (Dar es Salaam Registry)** applies. Therefore, if half of the amount required to be deposited in the matter hand is shared by or distributed to the accused persons equally, each applicant is required to deposit cash or security of immovable property valued at **Tanzania Shillings Eighty Million, Two Hundred Ninety Eight Thousand, Seven Hundred and Fifty (TZS 80, 298,750).**

For the aforesaid reasons, I accordingly admit **Michael**

Kiyango Buholo (1st Respondent), Eliud Patrick (3rd Respondent) Lameck Joseph Alute (4rd Respondent) and Adam Kionga (5th Applicant) to bail on the following conditions:

1. Each applicant should surrender his passport or travelling documents, if any to the Resident Magistrate's Court of Kisutu at Kisutu;
2. Each Applicant should not travel outside Dar es Salaam without prior approval of the Resident Magistrate's Court of Kisutu at Kisutu.
3. Each applicant shall deposit before the Court cash or title deed of an immovable property valued at **Tanzania Shillings Eighty Million, Two Hundred Ninety Eight Thousand, Seven Hundred and Fifty (TZS 80, 298,750).**
4. Applicant should have two reliable sureties and with permanent address within the jurisdiction of the trial Court;
5. Each surety should produce an introductory letter from his or her employer or local authorities and copy of a recognized identity card.
6. Each surety shall execute a bail bond in the sum of TZS **40, 149, 375/=;**

7. Each applicant to report to Resident Magistrate's Court of Kisutu at Kisutu once every month preferably, the last Monday;
8. Each Applicant shall appear in court on all dates the case is pending before the Resident Magistrate's Court of Kisutu at Kisutu and the trial; and
9. The Magistrate assigned with the case at the Resident Magistrate's Court of Kisutu at Kisutu to verify and determine compliance of these conditions.

It is so ordered.

DATED at **DAR ES SALAAM** this **24th** day of **December**, **2019.**



A handwritten signature in black ink, appearing to read "Mphanya".
E.S. Kisanya

JUDGE