

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

MISC CRIMINAL APPLICATION No. 174 OF 2019

(Originating from Economic Crime Case No. 58 of 219 in the District Court of Morogoro)

1. MGWENO MNYAGATO
2. SAMSON NGALEMBA
3. BENEDICT MICHAEL@DAMAS MAHUNGO } **APPLICANTS**

Versus

THE REPUBLIC.....RESPONDENT

RULING

2/10 - 16/10/ 219

J. A. DE- Mello, J;

The three Applicants have been arraigned and committed before the **District Court of Morogoro** charged with;

UNLAWFUL POSESSION OF GOVERNMENT TROPHIES C/S 86(1, (2, & (3 of the WILDLIFE CONSERVATION Act No. 5 of 2...9 [Cap. 283] as amended by Written Laws (Misc. Amendments Act No. 4 of 2..6 read together with paragraph

14 of the First Schedule to and section 57 (1 and 6(2 of the Economic and Organized Crime Control Act Cap. 2 RE 2..2

The Application is taken at the instance of all the three Applicants under the provision of 29 **(4) (d)** of the **Economic and Organized Crime Control Act Cap 200 [R.E 2002]** and any other enabling provision of the law". It is **Counsel Punges** prayer for adoption of the same, deponing under **paragraphs 4, 5, & 6** of the nature of the offence being bailable, willingness and, readiness to meet bail conditions and personal undertaking to make appearances whenever required. Counsel further drew the Court to **Article 13 (6 Constitutions of the United Republic of Tanzania 1977**, for presumption of innocence until proved guilty. The case of **Paulo Kiluwa vs. Republic** was referred in support of the contention.

In reply, **State Counsel Elia** concedes to the Application but with reservation on the percepts of **section 29(4 (e of Cap.2..** for half deposit of the value of subject matter which stands at **TShs. 16,13,29** high above the sealing of **TShs. Ten Million 1,000,000** in adherence with on section **36 (f) of Cap 200 [R.E 2002]**.

While mindful of the conditions set under **section 36 (5 of Cap. 2.** I am similarly very much alive of the offence charged to be a bailable and, which is not only legal but, Constitutional right. 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*)

I am even alert of the presumption of innocence on which the Applicants still enjoys until proven otherwise as was decided in the case of **Patel vs. R [1978] HCD in which Biron J;** (as he then was) held inter alia that:-

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

Moreover is the **Article 13 (6) (b)** of the **URT Constitution** which speaks of that presumption of innocence read together with **Article**

15 of the Constitution of the United Republic of Tanzania of 1977 as on the individual liberty of every citizen.

In the foregoing and couched under section **29(4) (d)** of the **Act (supra)** I hereby grant bail with conditions, two (2) permanent sureties of good standing in their communities, regular reporting at the **Resident Magistrate Court of Morogoro** once per month, preferably the last Friday and, last deposit either cash of property immovable equivalent to half the value of the subject matter, be it customary or otherwise.

It is accordingly ordered.




J. A. De-Mello

Judge

16th October, 2019