

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

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION No. 181 OF 2019

- | | |
|--|---------------------------------|
| 1. ROBERT SIMON KISENA..... | 1st APPLICANT |
| 2. KULWA SIMON KISENA..... | 2nd APPLICANT |
| 3. CHARLES SELEMAN NEWE..... | 3rd APPLICANT |
| 4. CHEN SHI..... | 4th APPLICANT |
| 5. FLORENCIA JONATHAN MASHAURI..... | 5th APPLICANT |

Versus

THE REPUBLIC.....RESPONDENT

RULING

25/09/ – 02/10/2019

J. A. DE-MELLO J;

The Applicants are before this Court for Bail Application, moving the Court under **section 29 (4) (5)** of the **Economic and Organized Crime Control Act Cap. 200** as amended by **Act No. 3 of 2016**. It is under **Certificate of Urgency** and, no **Counter Affidavit** has been preferred as the Republic submitted to have conceded to the Application considering the charges levied are all bailable but, with reservation as to terms imposed considering the gravity. **Counsel Seni Malimi** assisted by his colleague **Counsel Nehemia Goeffrey Nkoko** whose Affidavit is accompanying the said Application, prayed for its adoption. It is evident from **paragraph 2** of the said Affidavit that, the ~~five~~ Applicants, accused at the **Resident**

Magistrate Court of Dar Es Salaam at Kisutu charged of fifteen counts (15) as stipulated;

Leading Organized Crime for all; **Constructing Petroleum Installation** without Approval against the 1st , 2nd and 5th Applicants; **Selling Petroleum** in an unauthorized Premises, against the 1st , 2nd , 3rd, and 5th Applicants; **Stealing by Director of Companies** against the 1st and 4th Applicants; **Uttering False Documents**, against the 1st and 4th Applicants, **Obtaining Money by False Pretence** against the 1st and 4th Applicants; and, lastly **Occasioning Loss to a Specified** against all of them. The total value of the alleged loss is **Two billion, Four Hundred and Fourteen million, Three hundred and Twenty six Thousands and seventy cents (TShs. 2,414,326,260.70/=)** far well above the jurisdiction that, the **Committal Court at Kisutu** can entertain, though Bailable. In his submissions, **Counsel Malimi** stated that, they all have **Reliable Sureties** and, all being Tanzanian except the 4th , a **Chinese National**, but, all residing in Dar Es Salaam. On a serious note, Counsel concern of the confinement of the Applicants in custody for the past seven months (7). In view of affording the 4th Applicant the same treatment like the rest, Counsel cited the case of **Kishor D. Shapriya vs. Republic, Miscellaneous Criminal Application No. 79 of 2019**. Aware of the condition for half deposit the value of the subject matter, it is **Counsel Malimi's** further submissions that, this shared amongst the five this has no issue at all but, mitigated that none of them has criminal record, economic or else, neither absconded bail nor sentenced or imprisoned before.

Submitting on behalf of the Republic, **State Counsel Tumaini Kweka** while reiterating not to oppose Bail, reminded while cautioning the Court of the nature and gravity of the offences whose Bail if granted be subjected to condition set under **section 36 (5) (a) (b) (c) & (d) .**

As I consider grant of Bail to the Applicants let me share what section

Section. 36 (5) & (6) of Cap. 200, has, as I import;

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

(a) execution of a Bond to pay such sum of money as is commensurate to the monetary value and the gravity of the offence concerned:

Provided that where the offence for which the person is charged involves property whose value is ten million or more, the Court shall require that cash deposit equal to half the value be paid and the rest be secured by execution of a bond;

(b) appearance by the accused before the Court on a specified date at 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 sub section (4) impose any one or more of the following conditions, namely-

(a) requiring the accused to report at specified intervals to 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 condition,

Which appear to the Court to be likely to result in the appearance of the accused for 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.

From the foregoing therefore, I grant Bail subject to the following conditions.

- 1) The Applicants in their totality pay cash deposit/or landed property equal to half the subject value and, the rest of the remaining balance, by Bond executed by two (2) Sureties**
- 2) Appearance by the accused before the Committal Court at the working day of the end of every month.**
- 3) Surrender Passport or other valid and lawful Identification Status to the Police.**
- 4) To confine themselves within Dar Es Salaam city where they all reside, pending hearing and determination of the case unless under special permission when need arise.**

This is so, being mindful of the fact that, Bail is not only a Constitutional but Human right as enshrined under **Article 13(6)** of the **1977 Constitution of the URT**. It is all encompassed and embodied in the cardinal principle of law that, **Presumption of Innocence** where every citizen one is proved innocent before the eyes of law until proven otherwise, one which we all ought to embrace and, respect.

It is ordered and, granted.



J. A. De-Mello

JUDGE

2/10/2019