

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

AT DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO. 200 OF 2019

(Arising from Economic Case No. 70 of 2019 filed in the Resident Magistrate's Court of
Dar Es Salaam at Kisutu)

1. Salumu Mohamed Kaluona

2. Juma Salumu Kigombalina..... APPLICANTS

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of Last Order: 18.10.2019

Date of Ruling: 21.10.2019

Ebrahim, J:

This is an application for bail pending trial filed under the certificate of urgency. The application is made under **Section 29(4) (d) and 36(1) of the Economic and Organised Crimes Control Act, Cap. 200 R.E 2002 (the Act)** as amended by the **Written Laws Miscellaneous**

Amendments Act No. 3 of 2016. The applicant is praying for bail in respect of Economic Case No. 70 of 2019 pending at the Resident Magistrate's Court at Kisutu before Hon. Mbando SRM. The chamber application is supported by an affidavit of George Kawemba Mwiga, the legal counsel for the applicants.

Brief background of this application as could be discerned from the charge sheet appended with the application and the affidavit is that the applicants have been arraigned in the Resident Magistrate's Court at Kisutu Dar Es Salaam with an economic case charged with five counts of unlawful possession of Government Trophies contrary to **section 86(1)(2) and (3) (ii) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the First Schedule to, and section 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap 200 RE 2002.**

It is alleged that the applicants on 11th July 2019 at Buguruni area within Ilala District, Dar Es Salaam region were found in possession of various Government Trophies, to wit 5 wildebeest tails – 1st count; two noses and tails of the spotted hyena and the brain of the spotted hyena- 2nd count. It is alleged further that the applicants were also found with one

lion throat and one piece of lion skin – 3rd count; 1 night jar – 4th count; and 8 nails of aardvark – 5th count. The cumulative value of the subject matter is Tshs. 27,542,500/-.

At the hearing of this application, the applicants were represented by Mr. George Mwiga learned advocate; and the Republic was represented by Ms. Tuli Helela, learned State Attorney.

Submitting on behalf of the applicants, Mr. Mwiga adopted the affidavit in support of the application for bail and stated that according to the circumstances of the case, it is this court that has jurisdiction to entertain the bail application in terms of **section 29(4)(d) and 36(1) of EOCCA, Cap 200 RE 2002**. He urged the court to grant bail on the reasons that the applicants are ready to fulfill bail conditions to be set by the court; and that being outside the confinement shall avail them with better opportunity to effectively pursue on the plea bargain. He also commented on the fact that the respondent has not objected on the issuance of bail.

Ms. Mkune, learned State Attorney adopted their counter affidavit to form part of her submission and having no objection to the application,

urged the court to be guided by the provisions of **section 36(5) of the EOCCA** in granting bail.

Indeed the institution of bail falls on the positive side of the principle of presumption of innocence – see the cited case of **The DPP vs Bashir Waziri and Another**, Criminal Appeal No. 168/2012.

The offences for which the applicants are charged with have cumulative value of Tshs. 27,542,500/-. Thus, since the value of the property involved as outlined in the charge sheet is more than Tshs. 10million and the matter is at Kisumu Resident Magistrate Court where the trial has not commenced; and in the absence of consent conferring jurisdiction to that court; undoubtedly in line with the governing laws i.e. **Section 29(4)(d)** read together with **section 36(1) of the EOCCA, CAP 200 RE 2002**, the jurisdiction to hear bail application is vested in this court.

Section 36 (5) and (6) of the same Act provides for bail conditions where the court decides to admit an accused person to bail. According to para 9 to 11 of the affidavit, it has been deposed that the applicants are Tanzanian citizens having reliable sureties who are ready to comply with

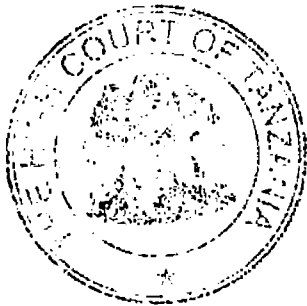
the bail conditions set by this court; and that their residence is at Morogoro within the jurisdiction of this court.

That being the position and pursuant to the above provisions of the law; and following the fact that the respondent did not have any objection on the granting of bail to the applicants, I hereby proceed to grant bail to the applicants on the following conditions:

- (1) That the each applicant shall deposit in court a sum of Tshs. 7,000,000/- in cash (say Tanzanian shillings seven Million only) Or in the alternative shall deposit to the custody of the court, a Title Deed of the immovable property to the equivalent amount.
- (2) That each applicant shall be required to provide two reliable sureties who shall be required to execute a bond of TZS. 3,000,000/- each (say Tanzania Shillings Three Million only) and shall ensure the applicant's attendance to court.
- (3) That each applicant shall be duty bound to appear in Court on all dates that shall be scheduled by the Court in Economic Case No. 70/2019 pending before Kisutu Resident Magistrate's Court.
- (4) That, each applicant shall immediately surrender his passport or any travelling document in his name to the Principal Resident Magistrate In Charge at Kisutu RM's Court.

- (5) That each applicant shall report to the Principle Resident Magistrate In charge at Kisumu Resident Magistrate's Court on each first Monday of the month.
- (6) That each applicant is hereby restricted to move outside the jurisdiction of this Court (High Court) without prior permission of the Senior Resident Magistrate assigned with the case.
- (7) Bail conditions to be ascertained/ verified by the SRM- Kisumu RM's court assigned with the case within 24 hours after the issuance of this order.

Accordingly ordered.

A handwritten signature in black ink, appearing to read "R.A. Ebrahim".

R.A. Ebrahim

Judge

Dar Es Salaam

21.10.2019