

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO. 203 OF 2019

(Arising from Economic Case No. 104 of 2019 filed in the Resident Magistrate's Court of Dar Es Salaam at Kisutu)

1. Khalid Zaid Said APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of Last Order: 17.10.2019

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) 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** and **Section 392A of the Criminal**

Procedure Act, Cap 20 RE 2002. The applicant is praying to be granted bail to the applicant in respect of Economic Case No. 104 of 2019 pending at the Resident Magistrate's Court of Dar Es Salaam at Kisutu before Hon. Mtega PRM. The Chamber Application is supported by an affidavit of Khalid Zaid Said, the applicant.

Brief background of this application as could be discerned from the charge sheet appended with the application is that the applicant has been arraigned in the Resident Magistrate's Court at Kisutu for the economic case charged with two counts. The first count is **Conspiracy to Commit an Offence** contrary to **Section 384 of the Penal Code, Cap 16 RE 2002.**

The second count is **Stealing by Servant** contrary to **Section 258 and 271 of the Penal Code Cap 16 RE 2002.** It is alleged that the applicant and his co-accused one David Leole on diverse dates between January 2016 and March 2018 stole cash money amounting to Tshs. 181,181,350/- the property of Camel Flour Mills Limited.

At the hearing of this application, the applicant was represented by Mr. Gordian Isaya Njaala learned advocate; and the respondent had the services of Ms. Doroth Massawe, learned Senior State Attorney.

The Respondent by consent agreed to go away with the requirement for the Republic to file a counter affidavit and the Court agreed the prayer to proceed with oral submission in lieu of filing counter affidavit and rejoinders.

Mr. Gordian in his oral submission and from the contents of the affidavit alluded that the value involved in the present economic case is above Tshs. 10 million. Hence the Resident Magistrate's Court at Kisutu has no jurisdiction to entertain the bail application. He alluded also that there being no consent issued by the DPP conferring jurisdiction to the RM's Court to try the offences filed at the time the applicant/accused appeared before Hon. Mtega PRM, the applicant could not make bail application.

Referring to **Article 13(6)(b) of the Constitution of the united Republic of Tanzania** (as amended) and the case of **R V Dodoli Kapufi**, Criminal Revision No. 1 of 2008 which was quoted with approval in the case of **DPP V Bashir Waziri and Another**, Criminal Appeal No. 168/2012, Mr. Gordian stressed that the offences that the applicant is charged with are bailable and that the applicant has reliable sureties who are ready to comply and execute all conditions that shall be set by the

Court if the bail is granted. The court was also informed that the applicant is a law abiding citizen and has permanent resident in Dar Es Salaam. He prayed for the court to grant bail to his client.

Ms. Massawe, learned Senior State Attorney having no objection to the application, urged the court to consider the gravity of the offence being an economic case and set the conditions that shall ensure that the applicant attends all scheduled proceedings.

Indeed bail is a mechanism designed to ensure that a person who is subject to the strictures of the law stays out of confinement and his freedom is guaranteed while the process of inquiry into his/her liability in the criminal process is being investigated and determined. The institution of bail, therefore, falls on the positive side of the principle of presumption of innocence – see the cited case of **The DPP vs Bashir Waziri** (supra).

The offences which the applicant is charged with have the value of Tshs. 181,181,350/-. Thus, since the value of the property involved as outlined in the charge sheet is more than Tshs. 10million and the matter is in Kisumu Resident Magistrate Court where the trial has not commenced; and in the absence of consent conferring jurisdiction to that court; in line with the

governing laws i.e. **Section 29(4)(d) of the EOCCA, CAP 200 RE 2002**, the jurisdiction to hear bail application is vested in this court.

Further **Section 36(1) of the Act**, gives this Court mandate either on its own motion or upon application subject to other provisions of the Act to admit an accused person to bail. **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 8 of the affidavit, it has been deponed that the applicant has reliable sureties who are ready to comply with the bail conditions set by 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 to the granting of bail to the applicant, I hereby proceed to grant bail to the applicant on the following conditions:

- (1) That the applicant shall deposit in this court a sum of Tshs. 45,000,000/- in cash (say Tanzanian shillings Forty Five Million only) (which is one half of the half amount of the total value there are two accused persons) Or in the alternative, he shall

deposit to the custody of the court, a Title Deed of the immovable property to the equivalent amount.

- (2) The applicant shall be required to provide two reliable sureties who shall be required to execute a bond of TZS. 20,000,000/- each (say Tanzania Shillings Twenty Million only) and shall ensure the applicant's attendance to court.
- (3) The applicant shall be duty bound to appear in Court on all dates that shall be scheduled by the Court in Economic Case No. 104/2019 pending before Kisutu Resident Magistrate's Court.
- (4) That, the applicant shall immediately surrender his passport or any travelling document in his name to Principal Resident Magistrate In Charge at Kisutu RM's Court.
- (5) The applicant shall report to the Principle Resident Magistrate in charge at Kisutu Resident Magistrate's Court on each first Monday of the month.
- (6) The applicant is hereby restricted to move outside the jurisdiction of this Court (High Court) without prior permission of the Principle Resident Magistrate assigned with the case.
- (7) Bail conditions to be ascertained/ verified by the PRM- Kisutu RM's court assigned with the case within 24 hours after the issuance of this order.

Accordingly ordered.



R.A. Ebrahim
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Judge

Dar Es Salaam

21.10.2019