IN THE HIGH COURT OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

MISCELLANEOUS CRIMINAL APPLICATION NO. 114 OF 2019

(Originating from Economic Crime Case No.15 of 2019 of the District Court of Urambo)

GEORGE CLEOPHANCE @ MABUGA ..... 1ST APPLICANT

PHILOMENA FRANCIS @ MACHELELA ..... 2ND APPLICANT

ANDEORI KIBULI @ PHARES ..... 3RD APPLICANT

THOMAS PAUL @ NTILATWA .....4TH APPLICANT

ALFAYO JACKSON @ MFURU .....5TH APPLICANT

VERSUS

REPUBLIC ..... RESPONDENT

.....

RULING

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Date of Last order: 15/05/2020

Date of Delivery: 12/06/2020

AMOUR S. KHAMIS, J.

George Cleophance @ Mbuga, Philomena D/o Machelela, Andeori Kibuli @ Phares, Thomas Paul @ Ntilatwa and Alfayo Jackson @ Mfuru were arraigned in the District Court of Urambo on eight diverse counts.

The charges dispatched to their feet were conspiracy contrary to Section 384 of the Penal Code, Cap. 16 R.E. 2002, leading organised crime contrary to Paragraph 4 (1) (a) of the First Schedule to and Section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap. 200, R.E. 2002 as amended by the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 and occasioning loss to a specified authority contrary to Paragraph 10 (1) of the First Schedule to and Section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act as amended (supra).

Other counts were obtaining money by false pretence contrary to Section 302 of the Penal Code (supra), giving false statements to the registers of death contrary to Section 352 of the Penal Code and making a false document contrary to Section 335 (a) and 338 of the Penal Code.

The seventh and eighth counts were uttering false document contrary to Section 342 (a) and 338 of the Penal Code and making false document contrary to Section 335 (a) and 338 of the Penal Code, respectively.

Pending trial of the Economic Crime Case No. 15 of 2019 currently pending in the District Court of Urambo, the five accused moved this Court under a certificate of urgency, to release them on bail.

The application was made by Chamber Summons under Section 29 (4) (d) of the Economic and Organized Crime Control Act, Cap. 200, R.E. 2002 and Section 36 (1), (5) (a) of the same

law as amended by Section 10 of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016 and Section 148 (5) (e) of the Criminal Procedure Act, Cap. 20, R.E. 2002.

The Chamber Summons was accompanied by an affidavit sworn by Ms. Winfrida Emmanuel Mroso, learned advocate, duly instructed to represent the applicants.

Ms. Mroso deposed that the charges against the applicants were bailable and the law had placed the jurisdiction to determine bail upon the High Court.

She averred that, the applicants did not have any criminal records other than the pending charges and that have reliable sureties with immovable properties ready and willing to comply with bail conditions.

The learned advocate further averred that the applicants stood to suffer irreparably should they continue to remain in custody as the investigation duration was unclear.

Through a counter affidavit affirmed by Mr. Miraji Kajiru, learned Senior State Attorney, the Republic contested the application.

Mr. Kajiru admitted Ms. Mroso's averments on nature of the charges pending in the trial Court but generally disputed the allegations on availability of sureties with immovable properties, applicants' lack of criminal records and investigation duration.

On a date of hearing, Mr. Miraji Kajiru, learned Senior State Attorney, appeared for the Republic while Mr. Saikon Justine Nokoren, learned advocate, dutifully acted for the applicants.

By consent, the application was canvassed by written submissions and parties observed the timeline set by the Court.

In their rival submissions, Mr. Saikon Justin Nokoren and Mr. Miraji Kajiru, referred to contents of the affidavit and counter affidavit respectively.

Both counsel submitted that the offences facing the applicants were bailable and that bail was both a constitutional and statutory right.

Whereas Mr. Saikon J. Nokoren urged this Court to admit the applicants to bail on reasonable and executable bail conditions, Mr. Kajiru drew attention of the Court to applicable provisions of the law.

Bail is a temporary release of an accused person awaiting trial on conditions set by the Court which may include deposit of a sum of money in Court to guarantee his/her appearance in Court.

The powers of this Court to grant bail on economic offences whose value exceeds Tshs. Ten Million are clearly spelt out in Section 29 (4) (d) of the **ECONOMIC AND ORGANIZED CRIME CONTROL ACT, CAP. 200, R.E. 2002**, which reads:

> *"29 (4) After the accused has been addressed as required by Subsection (1) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the*

purpose of this Section the power to hear bail applications and grant bail:

(d) in all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court."

Mr. Saikon J. Nokoren, contended that on account of the applicants' good criminal records, they would not jump bail or abscond from the Court's jurisdiction.

This Court is aware that availability of an accused to stand trial is a major, but not a solitary test to be applied in considering whether or not to grant bail. Other factors need be considered.

In **TITO DOUGLAS LYIMO V REPUBLIC (1978) LRT No. 55,** this Court held that:

"The Court may refuse bail on evidence that the granting of bail would result in failure of justice or in abuse of the process of the Court."

In **PATEL V REPUBLIC (1971) HCD No. 391**, four principles to be considered in granting bail were enumerated, thus:

"I would say that the Court should be guided by four main principles on the granting of bail pending trial. The first and foremost is that the Court should ask itself whether the accused would be available at the trial. Another principle which the Court should consider is whether the accused is likely to commit further offence if he is allowed out on bail in

which case his character is certainly not irrelevant. A further principle . . . is whether the accused is likely to interfere with the investigation by influencing witnesses or otherwise, and finally the gravity of the accusation and the severity of the punishment of conviction results, as to whether that in itself would prompt an accused to jump his bail."

In the present case, the applicants readily offered presence of independent and reliable sureties and insisted that all have fixed places of abode in Urambo District, within the jurisdiction of the trial Court.

Further, whereas no evidence was given by the respondent to suggest that the applicants were not of good character or had a history of criminality, it was not suggested that the applicants would abscond from the proceedings if released on bail.

Having regard to contents of the affidavit in support of the application and a counter affidavit thereof, I am convinced that there is no likelihood of the applicants to jump bail or commit other offence(s) while out on bail.

For these reasons, I go along with the submissions by both counsel that the applicants are entitled to bail.

The next issue for determination is on the bail conditions. It is trite law that the powers to set bail conditions has to be exercised in accordance with the applicable laws.

In **PROF. DR. COSTA RICKY MAHALU V ANOTHER V ATTORNEY GENERAL, MISC. CIVIL CAUSE NO. 35 OF 2007** (unreported), the Court of Appeal held that:

". . . *In granting bail the Court is not bound to inquire about the accused person's ability to meet the anticipated conditions of bail. In our view, conditions of bail do not depend on the ability by the accused person to comply with. They are instead, fixed by the Court in the exercise of its discretion or by the law with a view to ensuring that the accused person appears in Court for his trial. The conditions have to be reasonable . . . . . .*"

Section 36 (5) (a) and (b) of the **ECONOMIC AND ORGANIZED CRIME CONTROL ACT** (supra) provides that:

"36 (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 involves property whose value is ten million shillings 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 secified time and place."

The above provision is parimetaria with Section 148 (5) (e) of the **CRIMINAL PROCEDURE ACT, CAP. 20, R.E. 2002**, which reads:

"148 (5) A police officer incharge of a police station or a Court before whom an accused person is brought or appears, shall not admit that person to bail if:

(e) 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."

In discharging this duty of setting bail conditions, I will also be guided by the decision of this Court in **JULIUS S/O JOHN MWITA & 3 OTHERS V REPUBLIC, MISC. CRIMINAL APPLICATION NO. 11 OF 2019** (unreported) wherein, it was held that:

". . . Further taking into account that the applicants are 4 in number, this Court will swim and go into the veins and spirit of the holding of the decision of the case of ***SILVER HILLU DAWI AND ANOTHER V DPP*** *(supra) in setting bail conditions."*

In the referred to case of **SILVERSTER HILLU DAWI AND ANOTHER V DPP, CRIMINAL APPEAL NO. 250 OF 2006** (unreported), the Court of Appeal had this to say:

> *". . . . therefore Section 148 (5) (e) of the Criminal Procedure Act, Cap. 20, R.E. 2002 shall be accordingly construed, to read that a Court shall not admit person jointly charged to bail if the offence with which these persons are charged involves actual money or property whose value exceeds 10 million unless the person jointly deposit cash or other property (ies)."*

In the present case, there are five (5) accused persons/applicants and the amount involved in the case is a total of Tshs. 63, 197, 230. 37.

Half of that amount is Tshs. 31, 598, 615. 18, which going by the principle stated in **SILVESTER HILLU DAWI and JULIUS S/O JOHN MWITA** (supra), has to be jointly apportioned between the five (5) applicants.

Consequently and for the aforestated reasons, I grant the application and admit the applicants to bail on the following conditions:

1. That the applicants shall jointly deposit in Court a sum of Tshs. 31, 598, 615. 18 in cash or immovable properties located in Tabora Region.
2. That each of the applicants shall have two reliable sureties who shall excute or bond of Tshs. 6, 400,

000/= meaning that each surety shall execute a bond of Tshs. 3, 200, 000/=.

3. That each applicant shall surrender all his/her travelling documents, if any, to the Deputy Registrar of the High Court – Tabora.
4. That each surety stated in condition no. 2 above, shall own an immovable property of reasonable value within Tabora Region.
5. That the applicants shall not travel outside of Tabora Region without a prior written approval of the Resident Magistrate In charge, Urambo District Court.
6. That each time a permission of the Court to travel as per condition No. 5 above is issued, the Resident Magistrate In charge, Urambo District Court shall notify so the Deputy Registrar of the High Court Tabora.
7. That the sureties herein referred to shall be approved by the Deputy Registrar of the High Court Tabora.

It is so ordered.

AMOUR S. KHAMIS
JUDGE
12/06/2020

Court: The Ruling is delivered this 12th day of June, 2020 through video conferencing where the applicants had the ruling while at Uyui Prison, Mr. Noel Nkombe, advocate appears for the applicants, and Mr. Tumaini Pius, the State Attorney heard the ruling while in his office.

S.B. NSANA

AG. DEPUTY REGISTRAR

12/6/2020