

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MBEYA)

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 41 OF 2020

(Arising from Economic Case No. 10 of 2019 in the District Court of Mbarali
at Rujewa)

NIGA WISHI.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Hearing: 30/06/2020

Date of Ruling : 06/07/2020

MONGELLA, J.

The applicant is seeking for bail pending trial of Economic Crimes Case No. 10 of 2019 in Mbarali District Court at Rujewa. In this case he stands charged with the offence of unlawful possession of Government trophy contrary to section 86 (1), (2) (b) of the Wildlife Conservation Act, No. 5 of 2009 as amended and read together with paragraph 14 (d) of the First Schedule to section 57 (1) and 60 of the Economic and Organised Crime Control Act, Cap 200 R.E. 2002. In the charge it is alleged that the



applicant was found in possession of Ivory trophy worth USD 15,000 equivalent to T.shs. 37,500,000/- being property of the government.

The application was heard orally through virtual court. The applicant was represented by Ms. Nyasige Kajanja, learned advocate while the respondent was represented by Mr. Shindai Michael, learned State Attorney.

Ms. Kajanja submitted shortly in support of the application. She contended that bail is a constitutional right and the offence in which the applicant is charged is bailable. She added that the applicant is a good person with reliable sureties.

Replying to Ms. Kajanja's submission, Mr. Shindai first adopted the contents of the counter affidavit filed by the respondent. In the counter affidavit, the respondent resisted the application on the ground that no sufficient reason has been advanced by the applicant to warrant grant of bail by this Court. Mr. Shindai submitted that in addition to what is stated in the respondent's counter affidavit should the court find that it is right to grant bail then it should consider the requirements set out under section 36 (5) & (6) of the Economic and Organised Crime Control Act, Cap 200 R.E. 2002 (EOCCA).

I have considered the arguments by both counsels. The respondent resisted the bail on the ground that no sufficient reason has been advanced. In my considered view, since the offence is bailable under the law and the respondent has not presented any possible threats or consequences if the bail is granted, I do not see any reason to deny bail



to the applicant so long as the same is granted with conditions provided under the law. The question of bail on economic offences that are bailable has been considered in a number of cases including ***DPP vs. Aneth John Makame, Criminal Appeal no. 127 of 2018; Meshack Lupakisyo Kapange & Another vs. The Republic, Criminal Case no. 8 of 2019; and Athanas Sebastian Kapunda and Others vs. Republic, Misc. Economic Cause no. 7 of 2017*** whereby in all these cases the court granted bail basing on conditions set under section 36(5) and (6) of EOCCA.

I therefore proceed to grant the bail application upon the following conditions:-

1. The applicant should deposit **T.shs. Eighteen Million Seven Hundred and Fifty Thousand (18,750,000/-)** being half of the total amount of the value stated in the charge, that is, T.shs. 37,500,000/- or property of equal value to the amount to be deposited.
2. The applicant should provide two sureties, whereby each surety shall execute a bond of **Tshs. 9,375,000/-**. The sureties must be residents within the jurisdiction of the District Court of Mbarali.
3. Where the applicant opts to deposit immovable properties in compliance with the conditions set herein, it shall suffice for him to

deposit title deeds. Where the title deeds are unavailable, sufficient evidence must be provided with respect to the existence and ownership of such title deeds or properties.

4. The applicant must surrender all travel documents, if any, to the Resident Magistrate presiding over his case in the District court of Mbarali. Where the applicant claims not to possess any travel documents, proof to that effect must be obtained from the Immigration Authority.
5. The applicant must not to leave the jurisdiction of this Court Sub Registry Mbeya without written permission of the presiding Resident Magistrate at the District court of Mbarali.
6. The applicant must report in person to the presiding Resident Magistrate at the District court of Mbarali whenever needed to do so.
7. Verification of sureties and bond documents shall be effected by the presiding Resident Magistrate at the District court of Mbarali.

It is so ordered.

Dated at Mbeya on this 06th day of July 2020


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya, through virtual Court, on this 06th day of July 2020 in the presence of the applicant and his advocate, Ms. Nyansige Kajanja and Ms. Bernadetha Thomas, learned State Attorney for the respondent


L. M. MONGELLA

JUDGE

