

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF SONGEA)

AT SONGEA

MISCELLEOUS CRIMINAL APPLICATION NO. 33 OF 2019

**(Originating from Tunduru District Court Economic Case
No. 3 of 2019)**

SHAIBU HUSSEIN TWALIBU @ MAMBOSAFI APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of Last Order: 07/02/2020

Date of Ruling: 21/02/2020

BEFORE: S.C. MOSHI, J.

The applicant lodged this application under section 36(1) of the Economic and Organised Control Act, Cap. 200 R.E. 2002 praying to be granted bail. The genesis of the application is Economic case No. 3 of 2019 which is filed at Tunduru District Court whereby the accused who is the applicant herein is facing two offences thus:-

Unlawful possession of firearm contrary to section 20(1) (a) and (2) of the fire arms and Ammunition Control Act, No. 2 of 2015 read together with paragraph 31 of the first schedule of the Economic and Organised Crime Control Act [Cap. 200] as amended by Act No. 3 of 2016; and the second count is unlawful possession of Ammunitions contrary to section 21 (a) and 60 of the fire and Ammunitions Control Act No. 2 of 2015 read together with paragraph 31 of the first schedule of the Economic and Organised Crime Control Act [Cap. 200] as amended by Act No. 3 of 2016.

The record reveals that the applicant initially appeared before the District Court but the application was not granted on the ground that the court lacked jurisdiction. Hence the applicant knocked the door of this court. Before the application was heard I invited the parties to address the court on the issue of jurisdiction.

Mr. Aggrey Ajetu, advocate for the applicant argued that this court has jurisdiction to entertain the application in view of section 36(1) of Cap. 200 R.E. 2002 [The Act]. He said that, the subordinate court may have jurisdiction to entertain this application if the value of the property involved in the offence is less than 10 (ten) million Tanzanian Shillings

as provided for under section 29 (4) (a) of the Act. Also that section 29 (4) (d) empowers the High Court to grant bail if the value of the property involved is T.shs. 10,000,000/= or more. He contended that, the District Court denied to grant bail because the value of the fire arm is not known; hence he invoked the provisions of section 36 (1) of the Act.

On the other side Mr. Nkoleye, Senior State Attorney had a different stand. He argued that the application is improperly before this court in view of section 29 (4) (a) of the Act. The section reads that if the subject matter or property involved in the offence doesn't exceed T.shs. ten (10) million; the offence is bailable before the District Court while the case is still on investigation and before committal of the accused to the High Court. The jurisdiction seizes after committal. After committal of the accused to the High Court the jurisdiction is vested in the High Court; per section 29 (4) (a).

He further said that, in the case at hand the accused hasn't been committed to this court therefore the District Court has jurisdiction to grant bail. The law does not exclude the property whose value hasn't been shown. He proposed that the cause of action for the applicant was to appeal against the District Court's decision which denied bail to the

applicant. He prayed the court to strike out the application and advise the applicant to make his application before the committing court.

Mr. Aggrey rejoined that fire arms offences were added to the Act vide Miscellaneous Laws amendment Act, No. 3/2016. Initially the Act involved properties whose value could be assessed in monetary terms. That was it from both parties.

I have considered the submissions. It is my view that Mr. Nkoleye's argument is at the upper hand in view of section 29 (4) (a) (b) and which and (d). The law empowers the district courts to grant bail to the accused persons for cases which are at committal stage and the cases whose investigations are still ongoing except for cases where the value of the property involved in the offence is ten million Tanzanian shillings or more; see.

It is common ground that the accused in the present case is not yet committed to the High Court; besides investigation of the case is still ongoing. Therefore the district court and the court of resident magistrates have powers to grant bail; in this respect see section 29 (4) (a) which reads thus:-

***(a) Between the arrest and the committal of
the accused for trial by the court, is hereby***

***vested in the District Court and the court of
a resident magistrate if the value of any
property involved in the offence charged is
less than ten million shillings”.***

The construction of the cited provision is that this court i.e High Court is vested to entertain bail application in the following instances: After the accused has been committed for trial, trial has commenced or where the value of the property which is involved in the offence charged is ten million shillings or more at any stage before the commencement of the trial.

It is true that section 36 (1) of the Act gives general powers to the High Court to admit the accused person to bail after he has been charged but before he is convicted by the court. However for cases which are still under investigation and before the committal of the accused, section 29 (4) (a) (d) comes into play. It is worthy pointing out that section 36(1) is not an enabling provision for grant of bail which can stand alone, see the Court of Appeal decision in **Mwita Joseph Ikoh and others V.R**, Cr. App. No. 60/2008, Court of Appeal sitting at Mwanza (unreported). However, even if the applicant was to cite section 29 (4) (d) yet the charge at hand doesn't show the value of the property

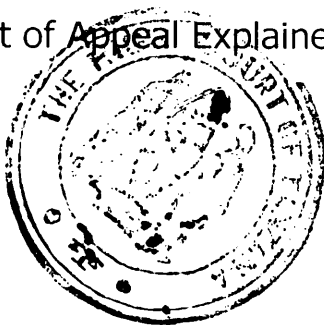
involved, hence it does not meet the threshold of ten million shillings or more.

All in all, basing on the aforesaid I hold that this application is improperly lodged before this court. I noted the applicant's argument that the District Court refused to grant bail on ground of lack of jurisdiction. I also perused through the proceedings of the District Court. It's apparent on the court's proceedings dated 9/6/2017 that the District Court wrongly directed the accused to apply bail to the High Court. However there is no indication that the applicant had ever applied for bail and that the application was refused. Therefore there is no decision which the applicant can appeal against as suggested by the Senior State Attorney.

That being the status of the case, at this stage the applicant may pursue his application for bail at the District Court i.e. Tunduru District Court which has jurisdiction to entertain it.

That said, the application is struck out accordingly.

Right of Appeal Explained.




S. C. MOSHI

JUDGE

21/2/2020