

IN THE COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 11/2020

(From the Resident Magistrate Court of Mbeya Eco. Case No. 36/2019)

1. HAPPYMARK GEOFFREY PAMBA } APPLICANTS
2. CHEYO MASHEMA MWIGULU }

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of hearing: 25. 02.2020

Date of Ruling: 25 .02.2020

DR. A. J. MAMBI, J.

The Applicants **HAPPYMARK GEOFFREY PAMBA & CHEYO MASHEMA MWIGULU** through their chamber summon filed this application for bail pending trial of the main case. The application was filed under sections 29 (4) and 36 (1) of the Economic and Organized Crime Control Act, Cap 200[R.E.2002]. The records show that the applicants have been charged with Economic Case No. 36 of 2019 that is pending at the Resident's Magistrate's Court of Mbeya in Mbeya. They are jointly charged with unlawfully possession of the Government Trophies valued at tshs. **69,450,000.**

During herring, the applicants who were represented by the learned Counsel Ms. Kajanja submitted that this application has been filled under certificate of urgency supported by affidavit. The applicants in their affidavit states that they have filled their application to this court since the trial court had no jurisdiction to deal with an application of this kind. The learned Counsel further submitted that since the offence is bailable and since there is no any certificate from the DPP, the applicants have the right to be granted bail. The learned Counsel submitted that the applicants in their affidavit has clearly stated his reasons as to why he has filed his application.

The Republic, through the learned State Attorney Mr Sanga submitted that the Republic has no objection so long as the applicants are given conditions if the court decides to grant their bail. He argued that he has gone through the affidavit and he has no objection since the offence is bailable and the trial court has no jurisdiction.

I have considerably gone through the application supported by affidavit and submissions from both parties. It is clear from the records that the applicants are seeking bail pending determination of his main case at the Trial Court. I have also perused the facts for charge in which the applicants stand charged. Before this court decides to determine this application there are certain issues or questions that need to be addressed and answered. In my considered view, the question before this court is that; is the offence under which the applicants are seeking bail bailable? If yes, does

the circumstance of the case warrants this court to grant the bail or not?. If the answer is in affirmative, are there any conditions that the applicants need to meet before such bail is granted?.

I wish to refer Section 148 of the Criminal Procedure Act Cap 20 [R.E.2002] which provides that:

“(1) When any person is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court and is prepared at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail the officer or the court, as the case may be, may, subject to the following provisions of this section, admit that person to bail; save that the officer or the court may, instead of taking bail from that person, release him on his executing a bond with or without sureties for his appearance as provided in this section.

(2) The amount of a bail shall be fixed with due regard to the gravity and other circumstances of the case, but shall not be excessive.

(3) The High Court may, subject to subsections (4) and (5) of this section, in any case direct that any person be admitted to bail or that the bail required by a subordinate court or a police officer be reduced”.

Similarly section 36 (1) of the Economic Organized Crimes Control Act, Cap 200 [R.E2002 provides that:

“(1) After a person is charged but before he is convicted by the Court, the Court may on its own motion or upon an application made by the accused person, subject to the following provisions of this section, admit the accused person to bail”.

It is clear from the provisions of the laws above that the offence against which the applicants stand charged is not under the list of

non-bailable offences under the law. This means that the offence of unlawful possession of the government trophies is bailable. It is also the position of law that the Trial Court has no jurisdiction to consider this bail apart from this court only. It is indisputable fact that the main purpose of granting bail to the accused has always been to let him be free for a while pending his trial as long as his guilt has not yet been established beyond reasonable doubts. However, this purpose is subject to a number of limitations before the court grants such bail. I have considerably gone through the records and facts from prosecution and finds that the circumstance of the case warrants this court to grant bail. I am of considered view that the applicants deserve bail at the court. It is prudent the accused person be immediately granted bail pending the determination of their main trial at the trial court to avoid unnecessary delay of justice.


From the above reason, the court grants bail to the applicants subject to the following conditions:-

The applicant to have two reliable sureties residing within Mbeya Region. All sureties to present introduction letters from their respective Kitongoji or Mtaa leaders to the High Court Registrar.

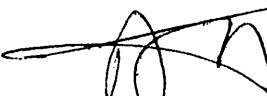
1. The sureties shall sign bond worth 10,000,000/= to the High Court of Mbeya
2. The applicant or his surety shall deposit **17, 362, 500/=** to the High Court of Mbeya or documents indicating ownership of immovable properties equivalent to this amount. This amount

is derived from the half amount (**34, 725, 0000/=**) of the total value that is **69, 450, 000/=** where the offence involves two accused persons. If the applicants have no such money, each is at liberty to present the document indicating ownership of an immovable property valued at the equivalent to (**17, 362, 500/=**).

3. Applicants to report to the office of Nearest Police Station or post within Mbeya once monthly from the date of this order.
4. Applicants to surrender their travelling documents or passports if any to the Registrar of the High Court in Mbeya.
5. The applicants shall seek permission from the Registrar of the High Court of Mbeya if they need to travel outside Mbeya Region.



DR. A.J. MAMBI
JUDGE
25.02. 2020

Ruling delivered in Chambers this 25th day of February , 2020
in presence of both parties.


DR. A.J. MAMBI
JUDGE
25.02. 2020

Right of Appeal explained.




DR. A.J. MAMBI
JUDGE
25.02. 2020