

IN THE HIGH COURT OF TANZANIA
(IRINGA DISTRICT REGISTRY)
AT IRINGA

MISC. ECONOMIC APPLICATION NO. 53 OF 2019
AND NO. 2 OF 2020

*(Originating from Mufindi District Court in Economic Crime Case
No. 6 of 2019)*

GETRO S/O CHULA MSAFIRI 1ST APPLICANT
DAMIAN JONAS LUBIDA @ MSOLOPA 2ND APPLICANT
EMMANUEL BAHATI SANDI 3RD APPLICANT
VERSUS
THE REPUBLIC RESPONDENT

RULING

Date of last order: 20/03/2020
Date of Ruling: 20/03/2020

NGWALA, J

The applicants, namely GETRO s/o CHULA MSAFIRI, DAMIAN s/o JONAS LUDIDA @ MSOLOPA and EMMANUEL s/o BAHATI SANDI, hereinafter to be referred to as the 1st, 2nd and 3rd applicants respectively, were jointly arraigned on a charge of **Unlawful Possession of Government Trophy** Contrary to Section 86(1) and (2) of the **Wildlife Conservation Act**, No. 5 of 2009 read together with section 14(d) of the 1st schedule to section 57(1)

and 60(1) and (2) of the **Economic and Organized Crime Control Act** [Cap 200 R. E 2002] as amended by Section 16(b) and 13(a) respectively of the **Written Laws (Miscellaneous Amendment) Act**, No. 3 of 2016.

The particulars of offence in the charge that was brought against them at the District Court of Mufindi, allege that on 8th day of December, 2019 at Kinyanambo 'B' area – Mafinga Township within Mufindi District in Iringa Region, they were unlawfully found in possession of Government trophy, to wit one piece of ELEPHANT TUSK worth Tshs. 34,500,000/= (Say Thirty Four Millions and Five Hundred Thousand Tanzanian Shillings Only), the property of the United Republic of Tanzania.

The 1st and 2nd Applicants lodged their Application in this Court on 16th Day of December, 2019 vide this Application, which has been consolidated with Misc Application No. 2 of 2020, containing the Application of the 3rd Applicant filed on 6th March, 2020.

In both the Applications, through their respective Chamber Summons and affidavits sworn by the applicants in support of the Application, made pursuant to the provisions of sections 29(4)(d) and 36(1) of the **Economic Organized Crime Control Act**, chapter 200 of the Laws, and Section 148(1)(2)(3) of the Criminal Procedure Act Cap. 20 R. E 2002; The Applicants are seeking to be granted bail in respect of the Economic Case No. 6 of 2019 that is pending at the District Court of Mufindi.

At the hearing of the Application, the 1st and 2nd Applicants were represented by Mr. Emmanuel Kalikenya Chengula learned Advocate. The 3rd Applicant appeared in person unrepresented. Miss Jackline Nungu learned State Attorney appeared for the Respondent.

In support of the Application Mr. Chengula, submitted that the offence charged is bailable, and that the respondents have not filed any objection in the counter affidavit against this Application. The counsel contended that, as there is neither the certificate filed conferring jurisdiction to hear the case at the District Court nor committal proceedings initiated to the High Court for the determination of the case, it was prayed that, bail be granted on the basis of the principle of sharing among the three applicants. The case of **Eng. Mohamed S/O Mshamu @ Ngulangwa V. The Republic Misc Economic Cause No. 14 of 2018**, in The Corruption and Economic Crimes Division at Iringa Sub – Registry was cited to fortify the prayer.

The 3rd applicant concurred with the submission by the learned advocate for the 1st and 2nd applicants. He therefore prayed to be admitted to bail.

In her turn, Miss Nungu, the learned State Attorney, basically did not object bail, she only prayed that, when prescribing the bail conditions the court should consider section 36(4)(e) of the

Economic and Organized Crimes Control Act, Cap 200 R. E 2002 that requires the applicants to pay cash deposits equivalent to half of the value of property involved in the offence because the value of the property exceeds ten Millions Shillings. The rest amount shall be secured by execution of a bond”

In rejoinder, Mr. Chengula urged the court in granting bail to consider and apply as well the provisions of section 148(5))e) of the **Criminal Procedure Act**, which is applicable in Economic Crime Cases in all procedures in terms of section 28 of the **Economic and Organized Crime Control Act** Cap 200 R. E 2002 that provides;-

"28, Except as provided in this part to the contrary, the procedure for arraignment and for hearing and determination of cases under this Act shall be in accordance with the provisions of the Criminal Procedure Act"

Having gone through the Chamber Summons and the supporting affidavits with the proper provision cited to move this court to hear and determine this Application, and having so far heard the learned State Attorney who has not objected bail but urged the court to impose conditions in terms of section 36(4)(e) of the **Economic and Organized Crime Control**; it is my considered view that the learned State Attorney who has raised no objection to grant bail now wishes the court to restrict bail or impose

stringent conditions to the applicants without justifiable reasons and or giving exceptional circumstances for the imposition of the conditions provided under section 36(4) of the **Economic and Organized Crime Control Act**, Cap 200 R. E 2002 which restricts courts to grant bail on certain condition as it provides:

"(4) The court shall not admit any person to bail if

- a) It appears to it that the accused person has previously been sentenced to imprisonment for a term exceeding three years.*
- b) It appears to it that the accused person has previously been granted bail by a court and failed to comply with the conditions of the bail or absconded.*
- c) The accused person is charged with an economic offence alleged to have been committed while he was released on bail by a court of law;*
- d) It appears to the court that it is necessary that the accused person be kept in custody for his own protection or safety;*
- e) The offence for which the person is charged involves property whose value exceeds ten million shillings, unless that person pays cash deposit equivalent to half the value of the property and the rest is secured by execution of a bond;***

f) If he charged with an offence under the Dangerous Drugs Act”.

The provision of section 36(5)(a) of the same Act cited by the counsel for the applicant provides that:

"Where the court decides to admit an accused person to bail it shall impose the following conditions on bail, namely:

a) Where 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, or if the title deed is not available, such other evidence as is satisfactory to the court in proof of existence of the property."

In considering the above quoted provision of Section 36(5)(a) of the Act (Supra) on the face of the provisions of section 36(4)(e) of the same Act of which in the circumstances of this case, I do not agree with the position taken by the learned State Attorney on her prayer to prescribe those conditions stipulated under Section 36(4)(e) of the **Economic and Organized Crime**

tantamount to denial of the basic right of bail which is not a privilege. It is important to note that courts abhor to impose unnecessary stiff bail conditions that are not in accordance with the general guidelines and principles on granting of bail. That is the grant of bail should not be detrimental to the interest of justice and the statutes in this country.

Pursuant to the provision of section 36(5)(a) of the Act, and applying the principle laid down in the case of **Sylvester Hillu Dawi and Stephen Leons Mwambene Vs The DPP, Criminal Appeal No. 250 of 2006 CAT at DSM (Unreported)**. Accordingly I impose the following conditions so that the applicants may be released on bail.

1. Each Applicant shall deposit in the trial court a sum of Tshs 14,500,000/= in cash, or **in the alternative**, each Applicant shall deposit in court a title deed for registered immovable property within the jurisdiction of the court that is equivalent to the stated amount. The title deed must be free from any encumbrances and must be approved by the Registrar of Titles or recognized Officer Acting on his behalf, and must be accompanied by a Valuation Report.
2. Each applicant must have two reliable sureties, who are residents within the jurisdiction of the trial court. That is

with fixed abode at Mufindi District. Each shall have to execute a bail bond in the sum of Tshs 10,000,000/=.

3. Each Applicant shall have to surrender travelling documents if any to the Resident Magistrate In charge of the trial District Court of Mufindi.
4. Each Applicant shall continue to appear and attend in court on each date fixed for hearing of the case pending before the District Court of Mufindi that is Economic Case No. 6 of 2019.
5. The Applicants shall not leave Mufindi District without prior permission of the Resident Magistrate In charge of Mufindi District Court.
6. The sureties and bail documents shall be approved by the trial Resident Magistrate at the District Court of Mufindi.

Order accordingly.



A.F. NGWALA,

JUDGE

20/03/2020