

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 94 AND 95 OF 2020

(Originating from Economic Crime Case No. 73 of 2018, in the District Court of Morogoro at Morogoro)

LAURENT PATRICK @ KISENGENI 1ST APPLICANT

LUCAS ANISETH 2ND APPLICANT

VERSUS

THE REPUBLIC (DPP) RESPONDENT

RULING

Date of Last Order: 05th October 2020

Date of Ruling: 05th October 2020.

E. E. Kakolaki, J

This is an application for bail by the applicants consolidating two applications No. 94 and 95 of 2020. It is preferred under S. 29(4)(d) and 36(1) of the Economic and Organized Crime Control Act [Cap. 200 R.E. 2002] as amended by Written Laws (Misc. Amendment) Act No. 3 of 2016 and any other enabling law. The same is supported by the affidavits sworn by both applicants. When served with the chamber summons and its affidavits the

respondent filed his lone counter affidavit countering both applicants' affidavits.

Briefly, the applicants are arraigned before the District Court of Morogoro at Morogoro facing the sole charge of Unlawful Possession of Government Trophies contrary to section 86(1), 2(b) and (3) of the Wildlife Conservation Act No. 5 of 2009 [Cap. 283] as amended by Written Laws (miscellaneous Amendment) Act No. 4 of 2016 read together with paragraph 14 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 Written Laws Miscellaneous Amendment Act by section 16 of the written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

It is alleged that on 17/08/2018 at Maji Mkenge area, Kisaki Village, within Morogoro District in Morogoro Region, both applicants were found in possession of Government Trophies namely, six (6) pieces of Giraffe meat and one (1) tail of Giraffe valued at 15,000 USD equivalent to Tanzanian Shillings 34,200,000/= only, the property of the Government of the United Republic of Tanzania without a permit from the Director of Wildlife.

When the matter came for hearing before me on 05/10/2020 all applicants who currently are incarcerated in Morogoro prison were represented by Mr. January Kambamwene learned advocate whereas the Republic (Respondent) was represented by Mr. Elia Athanas, learned State Attorney. Submitting in support of the application Mr. Kambamwene informed the court that applicants were praying for grant of bail as the offence with which they are charged with is bailable and they have reliable sureties who are trustworthy.

He said this court is seized with jurisdiction to entertain the matter as the value of the trophies subject to the charge in the subordinate court exceeds ten million and the respondent (DPP) is yet to confer jurisdiction to the District Court of Morogoro to try the case. He had it that, applicants have already spent three years in prison and added that, when considering conditions of bail court should bear in mind that applicants are peasants from the villages so they deserve lenient and reasonable bail conditions. Responding to the submission by the applicants' counsel, Mr. Athanas for the respondent indicated to the court from the outset that the respondent was not objecting to the grant of the application. However, reminded the court to take into consideration the serious nature of the offence facing the applicants by setting conditions that will guarantee availability of the applicant once needed.

I have carefully considered Mr. Kambamwene's submission, the grounds advanced by the applicants in their affidavits in support of the chamber summons, nature of the offence facing them as well as the fact that the application is not contested by the respondent and formed an opinion that the grounds advanced by the applicants are sufficient enough for this court to grant the application. The applicant have testified further through their affidavit in paragraph 7 that they have never been charged with any criminal wrong before. And furthermore that, they have never been sentenced to imprisonment for any term, let alone one exceeding three years or granted bail and jumped it or fail to comply to the conditions or abscond.

With all these grounds put in one basket for consideration and the fact that the offence facing them is bailable, this court is satisfied and hereby granting

bail to the applicants as prayed. The applicants have to comply with the following conditions:

1. The applicants to deposit in Court cash half of USD 15,000 which is USD 7,500 or its equivalence in Tanzanian Shillings (Tshs. 17,000,000/=) or the property equivalent to half of USD 15,000 or Tshs. 34,000,000/= and the rest of the amount be secured by execution of a bond in writing. The principle of sharing to apply.
2. The applicants to provide two reliable sureties who are to execute a bond of Tshs. 5,000,000/= each, and to satisfy the court that they are either employees of the Government or possess National Identity Card duly issued by NIDA with permanent residences within Morogoro Region.
3. The applicants should not leave the jurisdiction of the trial court without prior permission from the Resident Magistrate.
4. The applicants to report to the Regional Crime Officer for Morogoro Region according to the schedule prescribed by him.
5. Verification of sureties and bond documents to be executed by the District Court of Morogoro at Morogoro.
6. The applicants to surrender their passport and/or any other travelling documents (if any) to the District Court of Morogoro at Morogoro.

It is so ordered.

DATED at DAR ES SALAAM this 05th day of October, 2020.



E. E. KAKOLAKI

JUDGE

05/10/2020

Delivered at Dar es Salaam this 05th day of October, 2020 in the presence of Mr. January Kambamwene advocate for the Applicants, Mr. Elia Athanas, State Attorney for the respondent and Ms. Monica Msuya, court clerk.

Right of appeal is explained.



E. E. Kakolaki

JUDGE

05/10/2020