

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA  
AT MUSOMA**

**CONSOLIDATED MISC. CR. APPLICATIONS NO. 45 & 46 OF 2020**  
*(Arising from Economic Case No. 14 of 2020 in the District Court of  
Bunda at Bunda)*

**1. SEIF S/O YUSUF @KIKUNGU ..... 1<sup>ST</sup> APPLICANT**  
**2. SYLVESTER S/O JEREMIA ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

27<sup>th</sup> and 27<sup>th</sup> October, 2020

**KISANYA J.:**

On 22<sup>nd</sup> September, 2020, Seif Yusuf @ Kikungu and Sylvester Jeremia were arraigned before the District Court of Bunda at Bunda Court for offence unlawful possession of government trophies, contrary to section 86 (1) and (2) (ii) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap. 200, R.E 2019, (the EOCCA). It was alleged that, the applicants were on 12<sup>th</sup> September, 2020 at Hotel Santa in Nyasua area within Bunda District found in unlawful possession of one elephant tusk valued at Tshs. 34, 605,000, the property of the Government of the United Republic of Tanzania without a permit from the Director of Wildlife.

Therefore, since the value of elephant tusk involved in the offence pending in the District Court is more than ten million shillings, the applicants have filed two distinct applications for bail pending trial. Both applications were made under sections 29(4)(d) and 36(1) of the EOCCA and supported by an affidavit of each applicant. Since the applications originated from the same case, they were merged together as Consolidated Criminal Applications No. 45 and 46 of 2020.

In terms of the applicants' affidavit in support of the application the applicants were arrested and remanded in police custody on 12/09/2019 and arraigned before the District Court for the foresaid offence on 22/09/2020. It was averred that, the applicants are ready to abide by the bail conditions and that, they are reliable person with substantial properties, permanent residence and reliable sureties. In that regard, they urged the Court to admit them to bail pending trial. It is important to note that, the respondent did not file a counter- affidavit. Thus, the facts stated in the applicants' affidavits were not contested.

When this matter was placed before me for hearing today, Mr. Leonard Magwayega, learned advocate appeared for the applicants while the respondent/Republic was represented by Miss Monica Hokororo, learned State Attorney.

In his submission in support of the application, Mr. Magwayega prayed to adopt the applicants' affidavit as part of his submission. He argued that, the jurisdiction to determine an application for bail in respect of offence levelled against the applicants is vested in the Court. The learned counsel reiterated that, the applicants have permanent residence, immovable properties and reliable and hence, ready to abide by the bail conditions.

Considering that bail is a constitutional right, Mr. Magwayega urged the Court to grant the application.

Since the respondent did not file a counter affidavit, Mr. Hokororo was allowed to address the Court on the issue related to law as held in **Finn Von Warden Petersen and Another vs Arusha District Council**, Civil Application No. 562/17 of 2017, CAT at Arusha (unreported). The learned State Attorney submitted that, the Court had been properly moved to determine the application. She was of the view that, this matter has public interest and hence, urged the Court to impose bail conditions that will ensure that, the applicants appear during trial.

Having heard the parties' submissions, it is now my time to consider whether the application is meritorious or otherwise. It is not disputed that the applicants value of government trophies in the charged exceeds ten million shilling. It is also not disputed that, the said offence is bailable and that, in terms of section 29(4) (d) of the EOCCA, the power to consider and grant bail in respect of the said offence is vested in this Court. As rightly submitted by the Mr. Magwayega, bail is a constitutional right of the accused person. It is guaranteed under Article 13(6) of the Constitution of the United Republic of Tanzania, 1977. The main objective of remanding the accused person in custody is to ensure that, he is present whenever required for trial or at the time of receiving the sentence that may be passed against him. In that regard, the prime question in considering bail application is whether it is probable that the applicants will, if released, appear for trial up to the conclusion of the proceedings. There follow factors like the nature of and serious of offence, severity of punishment and whether the investigation will interfered to mention but a

few. See **Jaffer vs R** (1972) HCD No. 92.

In the present case, the respondent did not file a counter affidavit. It implies that, the fact that applicants are reliable persons with known address, substantial properties, and reliable sureties were not disputed. Likewise, it was not contested that, the applicants are ready to abide by the bail conditions and that they will suffer irreparable loss, economically, socially and physiologically. The respondent did not advance any ground to object this application. The Court was only asked to impose bail conditions that will ensure appearance of the applicants during trial.

Matters related to bail conditions in economic offences are provided for section 36 of the EOCCA. The accused/applicant is required, among others, to deposit half of the amount of money involved or deposit title deed of the immovable property or such other evidence satisfactory to the court in proof of existence of the property. The economic offence pending the District Court involves Government Trophies valued at Tshs. 34, 605,000/=. Half of the amount required for purposes of bail is Tshs. 17,302, 500/=. In view of what was held in **Silvester Hillu Dawi & Stephen Leons Mwambene v The Director of Public Prosecutions**, Criminal Appeal No. 250 of 2006 (Unreported), (Dar es Salaam Registry), each applicant is required to deposit Tshs. 8, 651,250/=.

For the reasons stated herein, the applicants' applications for bail are hereby granted. I accordingly order that the applicants be admitted to bail on the following conditions:

1. The applicants shall not travel outside Mara and Mwanza Regions without prior approval of the District Court of Bunda at Bunda.
2. Each applicant shall deposit a sum of 8, 651, 250 in cash or deposit to the custody of the trial Court, a title deed or evidence satisfactorily to prove existence of an immovable property valued at Tshs. 8, 651,250/=.
3. Each applicant shall have two reliable sureties with fixed abode within the jurisdiction of the trial Court;
4. Each surety shall execute a bail bond in the sum of Tshs. 4, 500,000/=.
5. Each surety shall produce an introductory letter from his employer or local authorities and a copy of recognized identity card.
6. Each applicant shall surrender his passport or any travelling document (if any);
7. The District Resident Magistrate assigned with the case at the District Court of Bunda at Bunda will ascertain compliance with these conditions.

It is so ordered.

DATED at MUSOMA this 27<sup>th</sup> day of October, 2020.



  
E.S. Kisanya  
JUDGE