

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

**MISC. CRIMINAL APPLICATION NO. 58 OF 2020
(Arising from Economic Crimes Case No. 1 of 2020, in the
Resident Magistrate Court of Mbeya at Mbeya)**

**1. ABDULMALIK ABDUL UPETE.....1ST APPLICANT
2. AYOUB KIDUMBA.....2ND APPLICANT
3. LAWI KALONGA.....3RD APPLICANT
4. MOHAMED OMARY HASSAN.....4TH APPLICANT**

VERSUS

THE REPUBLICRESPONDENT

ORDER

09 & 10/11/2020.

Utamwa, J.

This is an order on an application for bail pending trial in an Economic Case No. 1 of 2020 before the Court of Resident Magistrate of Mbeya, at Mbeya (the lower court). The applicants in this matter are four, namely; ABDULMALIK ABDUL UPETE, AYOUB KIDUMBA, LAWI KALONGA and MOHAMED OMARY HASSAN (the first, second, third and fourth applicant respectively). They moved this court by way of chamber summons, for bail under sections 29 (4) (d) and 36 (1) of the Economic and Organized Crimes Control Act, Cap. 200 R.E 2002, (the EOCCA) and any other enabling provisions of law. The application is supported by

two affidavits, one jointly affirmed by the first and fourth applicants, while the other was sworn mutually by the second and third applicants.

Though the affidavits supporting the application are two, their contents are similar. In essence, the affidavits deponed as follows: that, the applicants are jointly and together charged before the lower court with unlawful possession of government trophies contrary to section 86 (1) and (2) (c) (iii) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 (1) of the First Schedule to and sections 57 (1) and 60 (2) of the EOCCA. The value of the involved trophies is Tanzanian shillings (Tshs.) **137, 970, 000/=** (One Hundred Thirty Seven Million, Nine Hundred and Seventy Thousand only). The amount is above the value of property for which the lower court can entertain bail. The applicants also have reliable sureties with fixed places of living, valuable movable and immovable properties. They are ready to observe all bail conditions that may be set by the court.

It must be noted here that, the EOCCA was in fact, amended by section 10 of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016 (Act No. 3 of 2016) though the copy of the charge sheet attached to the affidavits did not disclose this fact. It is also alleged in the particulars of the offence that, on the 21st day of December, 2019, at Soweto area, within the City and Region of Mbeya, the four applicants were found in possession of Government Trophies to wit; eleven (11) pieces of Elephant Tusks worth USD 60,000 equivalent to Tshs. **137, 970, 000/=**, property of the United Republic of Tanzania without permit from the Director of Wildlife.

When the application was called upon for hearing, Ms. Nyasige Kajanja, learned counsel represented all the applicants. On the other hand, Mr. Saraji Iboru, learned Senior State Attorney (SSA) represented the respondent Republic. Though initially the respondent had objected

this application through the counter affidavit sworn on 7/8/2020 by Mr. Hebel Kihaka, State Attorney, at the hearing date, Mr. Iboru (SSA) informed this court orally that, the respondent was not objecting the application. He only urged this court to observe the law by fixing bail conditions requiring the applicants to deposit half of the sum involved in the charge sheet or property valued at that tune. He added that, the applicants may share the value as they are four. He supported the legal requirements by citing section 36 (4) (e) of the EOCCA. Ms. Nyasige Kajanja had nothing to re-join apart from underscoring the prayers sought in the chamber summons.

I have considered the record, submissions by the parties and the law. It is clear that, the facts deposed in the affidavit are not disputed since the respondent totally supported the application at the hearing date. This course, in my view, amounted to an abandonment of the previously filed counter affidavit mentioned above. Moreover, the following matters of facts are not disputed: that, according to the particulars of the applicants in a copy of the document attached with the copy of the charge sheet to the affidavit supporting the application, all applicants except the 1st applicant are peasants. The first applicant resides in Itezi-Mbeya, the second resides in Ilembula Njombe, the third is a resident of Miuji-Dodoma while the fourth applicant is a resident of Matogolo "A" – Morogoro.

The following positions of the law are also not disputed by the parties: that, offences with which the applicants are charged are bailable. This court, and not the lower court, has jurisdiction to entertain bail applications of this nature (where the value of the subject matter is Ten Million Tshs. or more). This position was also supported by the Court of Appeal of Tanzania (CAT) in the case of **Director of Public Prosecution v. Aneth John Makame, Criminal Appeal No. 127 of**

2018, CAT at Dar es Salaam (unreported). The stance of the law was further underscored by this court (My brother Mallaba, J as he then was) in **Salim s/o Majaliwa @ Mbengwa and 4 others v. Republic, Misc. Criminal Application No. 228 of 2018, High Court of Tanzania (HCT), at Tabora** (unreported)

It is also a clear position of our law that, bail is both a statutory and constitutional right for an accused person. The purpose of granting bail to an accused person is to let him enjoy his freedom as long as he shall appear in court for his trial; see **Hassan Othman Hassan @ Hassanoo v. Republic, Criminal Appeal No. 193 of 2014, CAT at Dar es Salaam** (unreported). There is thus, no reasonable grounds for denying bail to the applicants in the matter at hand. It is more so considering the fact that, their application is not objected by the respondent/Republic.

A question that arises here is this; which amount of cash (or property valued at which tune) that the applicants will be required to deposit if granted bail? As it has been correctly submitted by Mr. Iboru, learned SSA, the applicants stand charged jointly and together before the lower court. They are thus, entitled to benefit from "the Principle of Sharing." This principle was promulgated by the CAT in the case of **Silvester Hillu Dawi and another v. DPP, Criminal Appeal No. 250 of 2006, CAT, at Dar es Salaam** (unreported). It guides that, where more than one person are charged with an offence of the nature mentioned above, then the amount to be deposited as bail condition should be shared among the accused persons for purposes of bail.

It follows thus that, by simple arithmetic, half of the amount involved in the charge sheet (i. e. Tshs. **137, 970, 000/=** mentioned above) is Tshs. **68,985,000/=** (Sixty Eight Million, Nine Hundred and Eighty Five Thousand only). When one equally divides this amount to

the four applicants according to the above highlighted principle of sharing, each of them shall be required to deposit Tshs. **17,246,250/=** (Seventeen Million, Two Hundred and Forty Six Thousand, and Two Hundred and Fifty only).

Due to the above reasons, I find that, the applicants are entitled to the prayed bail. I accordingly, grant bail to the applicants on the following conditions which are mandatory as per section 36 (5) (a)-(d) of the EOCCA:

- a) That, each applicant shall deposit cash Tshs. **17,246,250/=** (Seventeen Million, Two Hundred and Forty Six Thousand, and Two Hundred and Fifty only) or property worth that sum. The rest of the amount of Tshs. **68,985,000/=** (Sixty Eight Million, Nine Hundred and Eighty Five Thousand only) shall be secured by execution of bonds by the applicants. Each applicant shall therefore, also execute a bond at the tune of Tshs. **17,246,250/=** (Seventeen Million, Two Hundred and Forty Six Thousand, Two Hundred and Fifty only) apart from the deposited amount or property valued at that sum, with two sureties (each) at the like sum.
- b) The applicants' sureties shall be residents within Mbeya Region which is the geographical jurisdiction of the lower court.
- c) In case the applicants will opt to deposit immovable properties in compliance with the condition set above, it shall be sufficient for them to deposit title deeds. If the title deeds will not be available, they shall adduce sufficient evidence to prove that their respective immovable properties actually exist.
- d) That, the applicants shall appear before the lower court on specified dates, time and place.

- e) They shall also surrender their respective passports or any other travel documents (if any) to the Mbeya Central Police, and
- f) They are restricted from traveling outside Mbeya Region (being the territorial jurisdiction of the lower court), unless written leave is granted by the lower court.

The sureties envisaged under the conditions of bail set above shall be approved by the Deputy Registrar of this court. It is so ordered.

J.H.K. UTAMWA

JUDGE

10/11/2020.

10/11/2020.

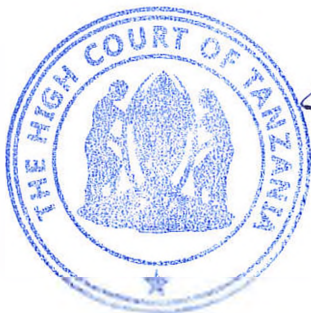
CORAM: Hon. JHK. Utamwa, J.

Applicants: present all (by virtual court link while they are in Ruanda Prison-Mbeya) and Ms. Nyasige Kajanja, advocate (present physically).

Respondent: Ms. Zena James, State Attorney (present in physically).

BC: Mr. Kibona, RMA.

Court: order pronounced in the presence of the four applicants (through virtual court link while they are in Ruanda Prison- Mbeya), Ms. Nyasige Kajanja, learned counsel for all the applicants and Ms. Zena James, learned State Attorney for the respondent, in court this 10th November, 2020.



JHK. UTAMWA.

JUDGE

10/11/2020.