

THE UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT MOSHI

MISC. CRIMINAL APPLICATION NO. 9 OF 2020

(C/F ORIGINAL ECONOMIC CASE NO. 4 OF 2019)

1. ARISTIDUS ONESPHORY MASSAWE @ BOSCO...APPLICANT

2. EVANCE NOLASCO SHIRIMA @ TITO APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

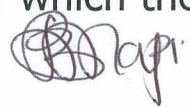
Date of last order- 9/07/2020

Date of Ruling -13/07/2020

RULING

MKAPA. J:

The Applicants **Aristidius Onesphory Massawe @Bosco & Evance Nolasco Shirima @Tito** and three others (not subject to this application) namely, **Amedeus Dionis Kavishe @Tesda @ Furaha, Fremini Julius Mrema and Simon Bonifas Tairo** have been arraigned before the Resident Magistrate Court of Moshi District at Moshi charged with seven different counts of which the

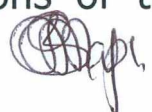


applicants are charged with two among them namely, unlawful possession of Government Trophies contrary to section 86 (1) (2) (c) (ii) of the Wildlife Conservation Act No.5 of 2009 read together with paragraph 14 (d) of the 1st schedule to section 57 (1) of the Economic, Organized Crime Control Act (Cap 200 R.E 2002), and second count, Leading Organized Crimes contrary to paragraph 4 (1) (a) of the 1st schedule to and section 57 (1) of the Economic and Organized Crime Control Act Cap 200 [R.E 2002].

Pending the hearing of the charged offences the applicants have filed an application to this court for bail through chamber summons under section 36 (1) of the Economic Organized Crimes Control Act, [EOCCA] Cap 200 [R.E 2002].

Hearing of the application was made orally. Ms. Grace Kabu, learned State Attorney represented the Respondent /Republic while the applicants had the services of Ms. Fay Sadallah learned advocate.

Arguing in support of the application Ms. Sadallah briefly prayed the affidavit in support of the chamber summons to form an integral part of her submission. She further prayed for the applicants to be granted bail pending the hearing of their case as the charged offences are bailable under the provisions of the

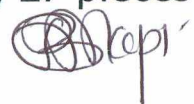


Economic and Organized Crimes Control Act and in the event the application is granted the applicants shall comply with the bail conditions.

In response Ms. Kabu did not object the bail. She further urged the Court to be guided by the legal requirements under section 148 (5) (e) of the Criminal Procedure Act Cap 20 [R.E 2002] which provides that:-

" A police officer in charge of a police station or a court before whom an accused person is brought or appears shall not admit that person to bail if the offence with which the person is charged involve actual money or property whose value exceed ten million unless that person deposit cash or other property equivalent to half the amount or value of actual money or property involved the rest is secured by execution of the bond"

Ms. Kabu went on submitting that, as per the charge sheet the applicants are faced with two counts first and seventh counts respectively. The first count namely being found in unlawful possession of Government trophies to wit; eight (8) elephant tusks valued at shillings (Tshs 138,180,000/=) and the seventh count namely leading organized crimes and furthering objective of a criminal racket by dealing in Government trophies to wit; 27 pieces

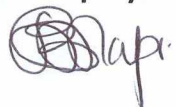


of elephant tusks valued at shillings (Tshs 241, 699,350 /=). Thus the total value for both counts is shillings 379,879,350/= which exceeds ten million shillings. It was Ms Kabu's argument that since the charge involves five (5) accused persons, they have to share the burden and in order for the applicants to be admitted to bail the law Criminal Procedure Act (*supra*) requires the applicants to deposit cash or other property equivalent to half the amount of the actual money or property involved.

Having considered submissions by both parties the question is whether the offences of unlawful possession and unlawful dealing in Government trophies are bailable under the law.

It is not disputed that the said offences fall under bailable offences in terms of the Economic Organized Crimes Control Act, and the fact that, bail is a right not a privilege to an accused person (See **Douglas Lyimo V. Republic [1978] TLR**], justice demands the applicants are entitled to bail. More so, the Respondent/ Republic has not objected the bail to the applicants and this Court has not been availed with any report on record warranting refusal of bail to the applicants.

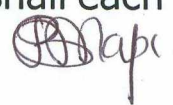
Given the conditions set by section 36 (5) (a) of EOCCA (*supra*) which requires *inter alia* the accused person (applicants) to pay



cash bond or submit to court the security (preferably title deed) whose value is half of the value of the property (subject matter) and the rest be executed by bond and considering the first and the seventh counts for which the applicants are charged have a total value at shillings **379,879,350/=** and the fact that the applicants are jointly charged with three other accused persons, if applying the principle of sharing as in the case of **Silvester Hillu Dawi & Stephen Leons Mwambene V. The Director of Public Prosecution Criminal Appeal No. 250 of 2006 (Unreported) (Dar-Es-Salaam Registry)** which is informative on the fact, the amount should be divided into five thus the amount due for each applicant shall be shillings **75,775,870/=**. Thereafter the said amount for each accused person shall be split into half, that is shillings **37,887,995/=**.

For the reasons discussed, I hereby grant bail to the applicants subject to the following conditions:-

1. Each applicant shall deposit cash amounting shillings (Tshs 37,887,995/=) or in the alternative shall deposit a title deed of an immovable property to the equivalent amount;
2. Each applicant must have two reliable sureties who shall each execute a bond amounting shillings 18,943,997.5



3. Each applicant shall surrender to Moshi Central Police Station his passport and any other travelling document(s) he might be possessing.
4. Each applicant must report to Moshi Central Police Station every Monday before 12:00 hrs.
5. Each applicant shall be duty bound to appear in the court on the dates scheduled by the Court in Economic Case No.4 of 2019.
6. The applicants shall remain in custody until the terms pertaining to cash deposits or deposit of title deed of immovable properties are met and Bond execution.
7. Applicants should not leave Kilimanjaro Region without prior permission of the Deputy Registrar of the High Court Moshi
8. Bail conditions to be verified by the Deputy Registrar of the High Court Moshi Registry.

Dated and Delivered at Moshi this 13th day of July, 2020.



A handwritten signature in dark ink, appearing to read "S.B. Mkapa", is written over the printed name.

S.B.MKAPA

JUDGE

13/07/2020