



IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA REGISTRY

AT BUKOBA

MISC. ECONOMIC CRIME CASE APPLICATION NO. 28 OF 2020

*(Arising from DC Economic Crime Case No. 3 of 2020 of the District
Court of Muleba at Muleba)*

NUHU EMMANUEL @ KYAITONGO -----APPLICANT

VERSUS

REPUBLIC-----RESPONDENT

RULING.

10/12/2020 & 14/12/2020

KAIRO, J.

This ruling is the result of the application for bail pending trial of Economic Crime Case No. 3 of 2020 instituted at Muleba District Court by the Applicant; one Nuhu s/o Emmanuel @ Kyaitongo. The Applicant has further prayed for any other relief this court may deem just to grant.

The application has been made under Sections 29(4)(d) and 36(1) of the Economic and Organized Crime Control Act Cap 200 RE: 2019 by GN. No. 140 of 2020 and Section 392A (1) & (2) of the Criminal Procedure Act Cap. 20 RE: 2019 by GN. No. 140 of 2020). As usual the application is supported by the affidavit of one Derick Zepherine, the Advocate for the Applicant from Kagemulo & Co. Advocates who also represented the Applicant. The Respondent is represented by Mr. Grey Uhagile, the learned State Attorney.

The Applicant in this case was arraigned before the District Court of Muleba in Economic Crime Case No. 3 of 2020 to answer a charge of eight (8) counts; seven of them concerned unlawful possession of Government Trophies c/s. 70 of the Wildlife Conservation Act Cap. 283 RE: 2002 and one count on illegal practicing as a traditional health practitioner without being registered or enrolled c/s 45(1) and (3) of the Traditional and Alternative Medicine Act No. 23 of 2002.

With regards to the seven counts on possession of Government Trophies, it was alleged that on 5th Day of February, 2020 at Makarwe village within Muleba District in Kagera Region, the Applicant was found in possession of the followings without permit: -

- (1) Water buck skin and horn with a value of USD 850\$
- (2) Worthong tooth with a value of USD 450\$
- (3) Zebra skin with a value of USD 1200\$
- (4) Otter skin with a value of USD 4170\$
- (5) Silver cat skin with a value of USD 300\$
- (6) Porcupine Quills with a value of USD 150\$



(7) Hertebeest tail with a value of USD 650\$

Following the Applicant's arrest and arraignment in court on 7/2/2020, he filed in this court an application for bail under certificate of urgency pending the trial of Economic Crime Case No. 3 of 2020 instituted against him. In his affidavit among others, the Applicant deposed that, the trial court has no jurisdiction to try and determine this matter hence this application as the offences charged with are bailable under the law.

When invited for oral submission to amplify his affidavit, Advocate Derick prayed to adopt the same as part of his oral submission. He further contended that the Applicant has been charged in the District Court which has no mandate to grant bail and the said case is pending in the said court as the investigation was not completed. The Advocate further stated that, the offences which the Applicant is being charged with are bailable and the court which can grant bail is this Hon. court. The Advocate went on to contend that, it's the noble legal principle that an accused person is presumed innocent until proved guilty. That, basing on the said principle and for interest of justice, this court can grant bail pending the trial of the case at the District court.

The Advocate further submitted that, since the Applicant was apprehended and remanded, it is now nine (9) months and the case at the District court is still at investigation stage. He thus concluded by praying the court to grant bail pending trial of the said case at the District Court.

In his brief and focused riposte, Mr. Uhagile; the learned Counsel for the Respondent informed the court that, basically the Respondent doesn't



object the bail application in this matter. He however he prayed the court to abide with the bail conditions stipulated in Section 36(5) and (6) of Cap. 299 RE: 2019 (supra).

When invited to make the rejoinder, advocate Derick prayed the court to note that, the value in the seven counts the Applicant is charged with have been quoted in US Dollars whereby for all counts, the total is USD 5570 \$ which according to the exchange rate the amount doesn't exceed Tshs. 15mln. He thus prayed the court to take note on the information when setting bail conditions set forth in Section 36(5) & (6) of Cap. 200 RE: 2019. The submission on the said notification to court was conceded by the learned State Attorney.

Having heard both parties, the issue for determination is whether the bail application can be granted pending the trial of the Muleba District Court Economic Crime Case No. 3 of 2020.

It has been stated times and again that bail is a right and not a privilege to an accused person [Refer the case of **Tito Douglas Lyimovrs R (1978) TLR 48**. Besides, the right is enshrined under Article 13(6) of the Constitution of the United Republic of Tanzania. The said right draws its genesis from the principle of presumption of innocence as rightly submitted by the Applicant's counsel. It goes therefore that the Applicant has a right to be granted bail pending trial as he prayed in this application. What remain for this court to determine is the conditions for bail which for economic cases the provision of Section 36(5) (a-d) and (6) are the guiding provisions which the court is required to abide with as rightly submitted by



Mr. Uhagile, the learned State attorney. The said provision has been interpreted in various court decisions including that of **DPP vrs Aneth John Makame; Criminal Appeal No. 127 of 2018, FaustaGuitonLumoso& Others vrs R; Misc. Economic Cause No. 40 of 2017** to mention few.

For easy reference, I wish to quote the said provision as hereunder: -

Where the court decides to admit an accused person to bail, it shall impose the following on the 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*
- (b) Appearance by the accused before the court on a specified date at a specified time and place;*
- (c) Surrender by the accused to the police of his passport or any other travel document; and*
- (d) Restriction of the movement of the accused to the area of the town, village or other area of his residence.*

In addition to the mandatory conditions quoted above, the court is allowed to impose any or more of the following conditions as stipulates in subsection (6) of the same section 36 of the Act to which I wish to quote in verbatim as well for easy reference;



- (a) Requiring the accused to report at specified intervals to a police station or other authority in his area of residence;*
- (b) Requiring the accused to abstain from visiting a particular locality or premises or association with certain specified persons; or*
- (c) Any other condition which the court may deem it fit to impose in addition to the preceding conditions, which appear to the court to be likely to result in the appearance of the accused for the trial or resumed trial at the time and place required or as may be necessary in the interest of justice or for the prevention of crime.*

As earlier alluded by the Applicant's counsel that, the value of the items the Applicant was found in possession with was quoted in USD Dollars. However, I wish to state it clear for the purpose of proper record that upon summing up, the total amount gotten is USD 7,770\$ and not USD 5570 stated by advocate Derick. To put the record clear, the exchange rate to be applied is the one at the time when the offence was committed (February, 2020). Whengoogled, I observed that 1 USD was equivalent to Tshs.2,292.46 during the month of February, 2020.

Thus, multiplying the total USD Dollars of 7770 times Tshs.2,292/=, the total value involved in the offences charged is Tshs. 17,812,414.2 which is approximated at Tshs.17,812,000/=.

Having in mind of the above quoted provision of the law together with the cited decision of the court in similar circumstances, and for the interest of justice, I hereby admit the Applicant to bail pending trial as per his sprayer.



I further impose the following conditions for bail to the applicant against which the applicant is ordered to fulfill to secure his release: -

1. *The Applicant has to deposit cash in sum Tanzanian Shillings eight Million nine hundred thousand (8,900,000/=) or immovable property equivalent to Tanzanian Shillings eight Million nine hundred thousand (8,900,000/=) In case the Applicant decides to deposit an immovable property, he shall deposit title deed supported by valuation Report from the Government valuer;*
2. *The Applicant to surrender his passport or any other travelling document, if any, to the District Crimes officer, Muleba District;*
3. *The Applicant shall report to the District Crimes Officer, Muleba District in every last Monday of a month and sign a specific register that can be inspected by the court, if need be;*
4. *The Applicant shall not travel out of Kagera region without prior written leave of the District Magistrate In-Charge of Muleba District;
Court;*
5. *The Applicant should have two sureties, and one must be employee of the government, local government, government agency, or any other organization recognized under the law and must be resident of Kagera Region.*
6. *The applicant's sureties must sign a bond of sum of Three Tanzanian Shillings (3,000,000/=) each as a security for appearance of the Applicant in court;*



7. *The Applicants' sureties should bring letters from their employers and their respective copy of identity cards;*
8. *The Applicant's sureties should produce in court letters of introduction from their respective street or village chairman;*
9. *The Applicant must enter appearance in court on every date when his case is scheduled for mention, hearing or any other order or direction of the court;*
10. *The Applicants' sureties shall undertake to make sure that the Applicant is available and enter attendance in court whenever required; and*
11. *The above bail conditions shall be supervised and sureties certified by the District registrar, High Court, Bukoba.*

It is so ordered.




L.G. Kairo
Judge

14/12/2020

R/A Explained.




L.G. Kairo
Judge

14/12/2020