

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

MISC. CRIMINAL APPLICATION NO. 56 OF 2020

(C/F Economic Case No. 64 of 2020 in the Resident Magistrate's Court of Arusha at Arusha)

SAITERU SANARE @ SANINGO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

25/11/2020 & 02/12/2020

GWAE, J

The applicant above under the legal services of **Mr. Ephraim Koisenge** (advocate) has brought this application for bail under certificate of urgency. The application is filed under section 29 (4) (d) and 36 (1), (5) & (6) of the Economic and Organized Crime Control Act Cap 200 Revised Edition, 2019 for the orders that this Court be pleased to grant and release the applicant on bail pending trial of Economic Case No 64 of 2020 before the Resident Magistrates Court of Arusha at Arusha.

The application is supported by an affidavit of the applicant which is to the effect that the offences to which the applicant stands charged are bailable offences

and that he has reliable sureties. The applicant also contended that his health condition is not good and he has to attend frequent medical checkups and long-term medication.

In the Resident Magistrate's Court the applicant stands charged with two offences namely; in the 1st count, unlawful possession of Government trophy contrary to sections 86 (1) & (2) (b) of the Wildlife Conservation Act, No.5 of 2009 read together with paragraph 14 of the 1st schedule to, and sect. 57 (1) & 60 (2) both of the Economic and Organized Crimes Control Act (Cap 200 R.E 2002) as amended by sect. 16 (a) and 13 (b) respectively of the written laws (Misc. amendments) Act No. 3 of 2016 and in the 2nd count, unlawful possession of weapon in certain circumstances contrary to sec. 103 of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the 1st schedule to and section 57 (1) and 60 (2) both of the Economic and Organized Crimes Control Act, Cao 200 Revised Edition 2002 as amended by section 16 (a) and 13 (b) respectively of the Written Laws (Misc. Amendments) Act No. 3 of 2016.

According to the charge sheet dated 30th September 2020, it is alleged that on the 18th September 2020 the applicant was found in unlawful possession of Government trophy to wit; Giraffe's meat equivalent to one killed Giraffe valued at USD 15,000 which is equal to Tshs. 34,635,450/=, on the same date the applicant was also found in unlawful possession of weapons to wit; a bush knife and a knife

in circumstances which raised reasonable presumption that he had used them in commission of offences under the Wildlife Conservation Act No. 5 of 2009.

By virtue of Section 29 (4) (d) of the Economic and Organized Crimes Control Act (supra), it is with no doubt that an application for bail in the charge against which the applicant is charged with could not be entertained by the Resident Magistrate's Court taking into account the value of the subject exceeds Tshs. 10,000,000/= This court being a competent court for determination of this application, I have taken into consideration the sworn affidavit of the applicant particularly on his healthy conditions as well as his social obligation to participate in economic activities and find no justifiable reason to refuse him bail pending completeness of investigation and trial.

Further to that it has been a well cherished principle of the law that a person is presumed innocent until proved guilty as it was held in the case of **Patel vs. R** [1978] HCD in which **Biron J**; (as he then was) held inter alia that: -

"Man, whilst awaiting trial is as of right entitled to bail, as there is a presumption of innocence until the contrary is proved. I would say that the court should be guided by four main principles on the granting of bail pending trial. The first and foremost is that the court should ask itself whether the accused would be available at the trial. Secondly, whether the accused is likely to commit further offence if he is allowed out on bail in which case his character is certainly not irrelevant. Thirdly, whether the accused is likely to interfere with the


investigation by influencing witnesses or otherwise, and fourthly, the gravity of the accusation and the severity of the punishment if conviction results"

Guided by the above quoted principle and taking into account that the offences to which the applicant is charged with are bailable and that the Republic has not exhibited any possibility of hindering investigation or in other words his release will be prejudicial to the investigation or the public interest this court is bound to grant the bail sought on the following conditions pursuant to section 36 (5) of the Economic and Organized Crimes Control Act;

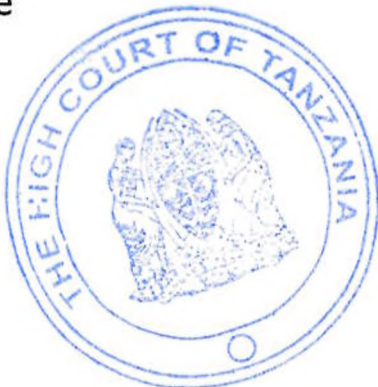
1. Applicant shall deposit hard cash Tshs. **17,317,000/=** or Other immovable property with title deed alternatively immovable property with estimated value not below half the actual amount of money involved by an authorized valuer.
2. Applicant to have two sureties with introductory letters from the area of locality or from their employer(s).
3. Each surety shall sign a bail bond of Tshs. 8,500,000/=.
4. Each surety must have either Passport or National Identity or Driving Licence or Voter's Card and the sureties' particulars must be clearly recorded.

5. The applicant is prohibited to leave the jurisdiction of this Court without a prior leave of the Court.
6. That, the applicant is to ensure that he does not commit any offence attracting a custodian sentence while on bail, in the event he commits any offence he shall show cause why his bail should not be cancelled.
7. Ascertainment of bail conditions set forth with shall be done by the Deputy Registrar of the Court together with a State Attorney present.

It is so ordered,


M.R. Gwae,
Judge.
02/12/2020

Court: Right of appeal explained in respect of the bail conditions set out herein above




M.R. Gwae,
Judge.
02/12/2020