

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

CONSOLIDATED MISC. CRIMINAL APPLICATIONS NO. 69 & 71 OF 2020

(C/F Economic Case No. 75 OF 2020 & 76 of 2020 in the Resident Magistrate's Court of
Arusha at Arusha)

AHMAD SHABANI BYABHATO @ BAHARIA.....1ST APPLICANT
LAZARO S/O SAMSON MOLLEL @ DALALI LAZARO.....2ND APPLICANT
AMIRI S/O DHAHABU AMIRI.....3RD APPLICANT
ASON S/O STANLEY JUMA.....4TH APPLICANT
ARON S/O JOUEL LAZARO.....5TH APPLICANT
SHABANI S/O JUMA MAKOKA6TH APPLICANT
NICKSON S/O MANACE AROKO.....7TH APPLICANT
GODLIVING S/O MASSAWE.....8TH APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

24/12/2020 & 28/12/2020

GWAE, J

In the Resident Magistrates' Court of Arusha at Arusha, the applicants named above were arraigned of an economic offence to wit; leading organized crime C/s paragraph 4 (1) (b) of the First Schedule to and section 57 (1) and 62 (2) of the Economic and Organized Crime Act (Cap 200 Revised Edition, 2019). Particulars of the offence are to the effect that on 2nd November 2020 within the

City and District of Arusha in Arusha Region knowingly induced residents of Annex area (for the 8th applicant) and residents of Bondeni area (for 1st applicant to the 7th applicant) to engage in violence for the purpose of promoting the objectives of criminal racket.

The applicants were denied bail on the ground that the subordinate court has no jurisdiction to entertain bail applications. Hence these applications brought Article 108 (2) of the Constitution of the United Republic of Tanzania, 1977, section 29 (4) (d) of the Economic and Organized Crime Control Act Cap 200 Revised Edition, 2019 and section 148 (1) and (3) section 149 and 391 of the Criminal Procedure Act, (Cap 20 Revised Edition, 2019).

When these two applications were called on for hearing, **Mr. Hatibu**, the learned state attorney appeared for the Republic whereas **Mr. Jebra Kambole** assisted by **Mr. Sheck Mfinanga** and **Miss Winfrida** (the learned advocates) appeared for the applicants.

The Republic did not resist the applicants' application for bail save that the bail conditions be stiffly imposed in order to guarantee their appearance when required while the applicants' advocates reiterated what is contained in the affidavits of Mr. Sheck Mfinanga which is to the effect that the offence with which the applicants stand charged is bailable and that the applicants are presumed innocent till proved otherwise

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 applicants are charged with could not be entertained by the Resident Magistrate's Court taking into account that no value which is certainly indicated in the charge sheet and considering the fact that ordinarily economic offences are triable by the High Court. Since the offence involved is an economic offence which does not involve value, it follows therefore, it is this court which has power to entertain bail application as correctly noted by the learned Resident Magistrate.

It goes without saying that every accused is presumed innocent and bail is constitutional right unless there are reasons for refusal of the same. In the case of **Patel vs. Republic** [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"

Basing on the above quoted principle and Constitutional right of an accused person and taking into account that the offence with which the applicants are charged is bailable and that the Republic has not exhibited any possibility on the part of the applicants of interfering with investigation or in other words if released it will be prejudicial to the investigation or the public interest or their safety will be prejudicial. Therefore, 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 (supra);

1. Each applicant shall deposit hard cash Tshs. **10,000,000/=** 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. Each applicant to have one reliable surety with an introductory letter from the area of locality or from his employer.
3. Each surety shall sign a bail bond of Tshs. **10,000,0000/=**.
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. That, each applicant has to ensure that he is a good citizen throughout the pendency of the case otherwise bail granted may be cancelled
6. Bail conditions set herein above shall be ascertained by the Deputy Registrar of the Court together with a State Attorney present.

It is so ordered,


M.R. GWAE,
JUDGE.
28/12/2020

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




M.R. GWAE,
JUDGE.
28/12/2020

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