

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)
AT MTWARA

MISC. CRIMINAL APPLICATION NO. 06 OF 2020

(Originating from the District Court of Masasi in Economic Crime Case No. 04 of 2020).

KELVIN SILLIMU MILLANZI..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Hearing date on: 26/03/2020

Ruling date on: 27/03/2020

NGWEMBE, J:

Kelvin Sillimu Millanzi is charged for economic accusations of twelve (12) counts in economic case No. 4 of 2020 pending at Masasi District Court. He is alleged to have participated jointly with others in different occasions to cause loss to MANAWASA contrary to sections 333, 335 (a) & 337 of the Penal Code Cape 16 R.E. 2002 and occasioning loss to a Specified Authority contrary to paragraph 10 (1) of the first schedule to and section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act Cap 200 R.E. 2002. It is alleged that at diverse dates between 5th February, 2013 and

30th December, 2016 at various places within Masasi District in Mtwara region, did cause pecuniary loss of TZS 16,704.316/ property of MANAWASA.

The applicant after being arraigned in court and charged accordingly, preferred this application for bail in this court under assistance of learned advocate Shadrack Rweikiza. The applicant moved this court to determine the application by citing sections 29 (4), 36 (1) of Economic and Organized Crimes Control Act Cap 200 R.E. 2002, read together with article 13 (6) (b) of the Constitution of United Republic of Tanzania.

On the hearing date, Mr. Rweikiza argued that bail is one of the fundamental rights of an accused person charged on bailable offences. That the applicant has able sureties who can comply with bail conditions set forth by the court. Above all assured this court that the applicant will be available at any time required by the trial court.

In turn the Republic was represented by learned senior State Attorney Paul Kimweri who did not oppose the application, but asked this court to issue bail conditions according to the dictates of law.

The principles governing bail, undoubtedly, is settled in our jurisdiction. That it is basically a court's discretion to grant or refuse to grant bail. However, according to the current laws, bail conditions are no longer discretionary powers of the court, rather are codified under section 36 (5) & (6) of the Economic and Organized Crime Control Act (EOCCA,) and section 148 (5) (e) of Criminal Procedure Act (CPA). These sections have codified bail conditions, which courts should apply as they are. More so,

the statute has limited the jurisdiction of courts to admit and determine applications for bail. Section 29 (4) (d) of EOCCA read as follows:-

"After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purpose of this section the power to hear bail applications and grant bail:

*(d) in all cases where the value of any property involved in the offence charged is **ten million shillings or more** at any stage before commencement of the trial before the court is hereby vested in the **High Court**"*

Similarly, section 148 (5) (e) of CPA provides jurisdiction to this court to grant bail with conditions so provided therein. The section is Quoted hereunder:

"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:-

*(e) 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*

Provided that where the property to be deposited is immovable, it shall be sufficient to deposit the title deed, or if the title deed is not available such other evidence as is satisfactory to the court in proof of existence of the property; save that this provision shall not apply in the case of police bail'

In both sections, the amount involved is TZS 10 million or more. Notably, such amount of money was viewed enough to draw the attention of this court. However, such amount of money as of today and with the current financial situation of our country, is very small deserving an attention of a lowest court. Unfortunate that is the law, unless it is changed otherwise, this court cannot refuse to apply it.

The most celebrated legal principle related to bail is that, bail conditions do not depend on ability by the accused person to comply with, but they are fixed to ensure that, the accused person appears in court for his/her trial. Therefore, the bail conditions should be reasonable and capable of being complied with. This principle was promulgated in several decided cases including in the case of **Profesor Dr. Costa Rick Mahalu and Grace Alfred Martin Vs, Hon. Attorney General, Misc. Civil Cause No. 35 of 2007; Athanas Sebastian Kapunga & 7 others Vs. R Misc. Economic cause No. 7 of 2017 and Meshack Lupakisyo Kapange & another Vs. R. Misc. Criminal Cause No 8 of 2019.**

The overriding principle of bail is centered on assurance of the applicant to attend court trials, whenever required and to ensure that, while on bail the

applicant will not commit other offences of similar nature or breach of peace and tranquility in the society.

I am attracted with the wise advice of Judge Biron (as he then was) in the case of **Patel Vs. R, [1971] HC 391** when was confronted with similar application for bail, came up with four preconditions as I hereby quote:

*"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"*

Those questions were relevant when bail conditions were purely discretionary powers of the court. In the present statutes and as discussed above, nowadays bail conditions are no longer discretionary powers of the court, rather are statutory. The statutes have ousted the jurisdiction of this court to determine bail conditions in accordance with the prevailing facts and circumstances of each case.

Bail conditions on economic cases are provided for under section 36 (5) & (6) of the Act as amended by the Written Laws (Misc. Amendments) Act No

3 of 2016 which amended section 36 (a) by deleting and substituting with new subsections as quoted hereunder:-

Section 36 (5): *"Where the court decides to admit an accused person to bail, it shall impose the following conditions 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; provided that where the property to be deposited is immovable, it shall be sufficient to deposit the title deed, or if the title deed is not available such other evidence as is satisfactory to the court in proof of existence of the property; save that this provision shall not apply in the case of police bail;*
- (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 pass port or any other traveling documents; and*
- (d) Restriction of the movement of the accused to the area of the time, village or other area of his residence".*

36 (6) The court may, in addition to the mandatory conditions prescribed in subsection 5 impose any one or more of the following conditions, namely:-

- (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;*
- (c) *Any other condition which the court may deem 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 prevention of crime.*

These preconditions especially under subsection (5) are mandatory, the term used is "shall" meaning must be complied with. The court has no discretion to depart from those statutory conditions for bail, but to comply with.

I have no doubt, the accused person, while on bail will not fail to enter appearance at the trial court, whenever required. Further, when he is on bail will not attempt to interfere with investigation process or influence witnesses. More so, there is no doubt that when he is on bail will not commit other similar offences or breach of peace and tranquility in the society.

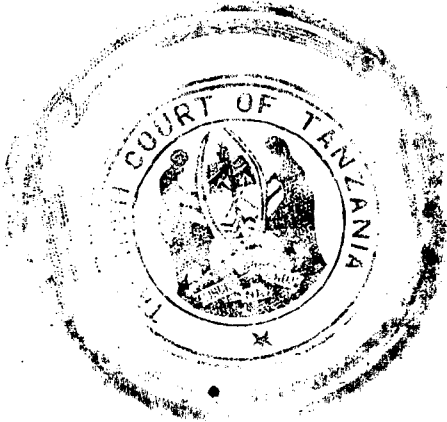
Notably upon perusing the court record, it is observed that all Co – accused were bailed out in different applications. The one who remained in custody is the applicant.

In the premise and based on the above consideration, the applicant, **KELVIN SILLIMU MILLANZI** is hereby admitted to bail as prayed in the chamber summons. Being guided by the above quoted section 36 (5) of Economic and Organized Crimes Control Act, and considering that the value of money in the offence facing the applicant with his co - accused is more than ten million shillings, and following the dictates of the cited section of law, therefore, the grant of bail to the applicant is subject to the fulfillment of the following conditions:-

1. The applicant shall deposit **TZS 930,000/=, which is calculated as follows: $TZS 16,704,316 \div 2 = 8,352,158 \sim 9$ is equal to 930,000/=** This amount is arrived after considering the accused person and the fact that he has to deposit half of the amount or deposit **Title Deed** of immovable properties having similar value or more value located in Mtwara Municipality or Lindi Municipality or Masasi township or in any other cities in Tanzania;
2. The applicant must provide two reliable sureties who are to execute bonds valued **TZS. Five hundred thousand** each. Preferably one surety may be an employee of the Government of United Republic of Tanzania or any reliable institution or company;
3. The applicant should not leave the jurisdiction of the District Court of Masasi without permission from the District Court Magistrate;
4. The applicant should surrender his passport, if he has, and any other travelling documents to the District Court Magistrate of Masasi;

5. The applicant is mandatorily compelled to appear in court at any time when he is required for hearing and final determination of the criminal case facing him; and
6. Verification of the sureties and bond documents shall be executed by the District Court Magistrate of Masasi.

I accordingly Order.



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P.J. NGWEMBE

JUDGE

27/3/2020

Court: Ruling delivered at Mtwara in Chambers on this 27th day of March, 2020 in the presence of learned advocate Shedrack Rweikiza for the Applicant and Mr. Paul Kimweri State Attorney for the Republic/Respondent.

Right to appeal to the Court of Appeal explained.



A handwritten signature in black ink, appearing to be 'P.J. Ngwembe', written over a horizontal line.

P.J. NGWEMBE

JUDGE

27/3/2020