

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

**MISC. CRIMINAL APPLICATION NO. 07 OF 2020**

*(Originating from the District Court of Newala in Economic Crime Case No. 01 of 2020).*

**ABADI S/O SEIF SAID .....1<sup>ST</sup> APPLICANT**  
**RABI HALFANI KIMBUNGA .....2<sup>ND</sup> APPLICANT**  
**ASHA ABDALLAH CHIAPO .....3<sup>RD</sup> APPLICANT**  
**ISACK FREDRICK .....4<sup>TH</sup> APPLICANT**  
**ISLAMI MOHAMED MWAYA .....5<sup>TH</sup> APPLICANT**  
**AZIZ ISMAIL MNOKOTE .....6<sup>TH</sup> APPLICANT**  
**HALFAN KAMBUNGA BILALI .....7<sup>TH</sup> APPLICANT**  
**JAIMU HAMISI MALECHE .....8<sup>TH</sup> APPLICANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

*Hearing date on: 26/03/2020*

*Ruling date on: 27/03/2020*

**NGWEMBE, J:**

The applicants under legal assistance of Mr. Shadrack Rweikiza learned advocate, lodged this application under certificate of urgency calling for an

urgent hearing of the application for bail pending final determination of Economic Case No. 01 of 2020 in the District Court of Newala.

All applicants jointly are facing one charge of 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 on diverse dates during cashew nut season of 2017/2018 within Newala District in Mtwara region jointly caused HATUA MOJA AMCOS to suffer a pecuniary loss of TZS 156,034,263/69

The applicants have moved this court to determine their application under sections 29 (4), 36 (1) of Economic and Organized Crimes Control Act Cap 200 R.E. 2002, Section 148 (3) of the Criminal Procedure Act, Cap 20 R.E. 2002, read together with section 392A (1) (2) of the Criminal Procedure Act as amended by the Written Laws Misc. Amendments) Act, No. 3 of 2011.

On the hearing date, Mr. Rweikiza argued that bail is one of the fundamental rights of an accused person charged on bailable offences. That bail is a constitutional right preserved in article 13 (6) of the Constitution of United Republic of Tanzania. He referred this court to the case of **Patel Vs. R, [1971] HCD 391**, where Judge Biron held that an accused awaiting trial is of right entitled to bail as there is presumption of innocence until the contrary is proved. Also referred to case of **Brown Joseph Kundule & 5 others Vs. R, Misc. Criminal Application No. 34 of 2008** where judge Mihayo considered in details on bailable offences that should as a matter of principle be available to a suspect as soon as practicable if that suspect can meet bail conditions.

In conclusion, he argued that all applicants have reliable sureties to meet bail conditions set by the court and that the applicants ensure availability in every day required by the court. Thus the application be granted as prayed in the chamber summons.

In turn, the Republic being represented by learned senior State Attorney Paul Kimweri conceded to the application that the charge facing the applicants are bailable. Therefore, the application, be granted subject to bail conditions set forth by the law.

Since immemorial, bail has been a right to an accused person, until his accusations is proved by a competent court or tribunal. Such principle gave birth to another equally important cardinal rule that a person is presumed innocent until proved otherwise by a competent court of law. Such right is preserved in article 13 (6) (b) of the constitution of United Republic of Tanzania. The presumption of innocence is accompanied with another celebrated legal principle, that bail conditions should not depend on ability of an accused person to comply with, but to ensure the accused person appears in court for his trial. Therefore, bail conditions should be reasonable and capable of being complied with. In the contrary, when bail conditions are codified, the presumption of innocence becomes inapplicable or compromised.

According to the prevailing laws, specifically sections 36 (5) & (6) of the Economic and Organized Crime Control Act (EOCCA,) and 148 (5) (e) of Criminal Procedure Act (CPA), have codified bail conditions. More so, the statute has limited the jurisdiction of courts to admit and determine bail applications. 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 as rightly 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'*

Prior to codification of bail conditions on charge related to economic offences, the court was guided by four rules as was rightly pronounced by Judge Biron (as he then was) in the case of **Patel Vs. R, [1971] HC 391** 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"

Those rules were relevant when bail conditions were purely discretionary powers of the court. In the presence of the codified bail conditions as quoted herein after, the guidelines in **Patel's** case is not applicable to economic related offences and the court is no longer has discretionary powers to provide bail conditions based on facts the circumstances of each case. This position also was considered by this court in the case of **Nguyen Van Chart Vs. R, [2016] TLS – LR 8**, where it was held that bail is a right unless it is taken away or restricted by the law. Denial of bail must be accompanied with reasons justified to safeguard public interest. Bail should be granted without delay whenever possible without detriment

to the interest of justice. Moreover, bail should not be withheld maliciously or as a punishment to an accused prior to determination of his accusations.

Bail on economic cases in our jurisdiction are restrictive, subject to fulfilment of conditions set forth in section 36 (5) of the Act as amended by the Written Laws (Misc. Amendments) Act No 3 of 2016 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”.*

These preconditions 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. That being the law, then the applicants in this application for bail are subjected to comply with prior to being released on bail.

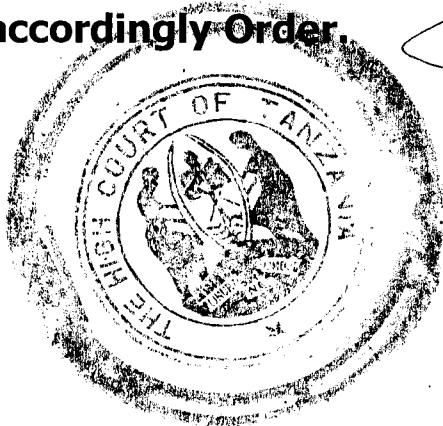
The applicants have assured this court through their affidavit sworn by their advocate Shadrack Rweikiza, that they are responsible citizens having fixed place of abode at Mnolela, Mtanda and Mkunjo Villages all located within Newala District and that they have able sureties to meet bail conditions, I have no doubt, the accused persons, while on bail will not fail to enter appearance at the trial court, whenever required. Further, when they are on bail will not attempt to interfere with investigation process or influence witnesses. More so, there is no doubt they will not commit other similar offences or breach peace and tranquility in the society.

In the premise, the applicants, **Abadi Seif Said; Rabi Halfani Kambunga; Asha Abdallah Chiapo; Isack Fredrick; Islam Mohamed Mwaya; Aziz Ismail Mnokote; Halfan Kambunga Bilali and Jaimu Hamisi Maleche** are 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 applicants are more than ten million shillings, and the cited sections provide mandatory conditions thereto, therefore, the grant of bail to the applicants are subject to the fulfilment of the following conditions:-

1. The applicant shall deposit **TZS 9,700,000/=**, which is **calculated as follows: TZS 156,034,263.69~2 = 78,017,131~8 is equal to 9,752,141/=** This amount is arrived after considering the accused persons and the fact that they have 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, or Newala township or in any other cities in Tanzania;
2. The applicants must provide two reliable sureties who are to execute bonds valued **TZS. Five million** each. Preferably one surety may be an employee of the Government of United Republic of Tanzania or any reliable institutions or company;
3. The applicants should not leave the jurisdiction of the District Court of Newala without permission from the District Court Magistrate;
4. The applicants should surrender their passports, if any, and any other travelling documents to the District Court Magistrate of Newala;
5. The applicants are mandatorily compelled to appear in court at any time when they are required for hearing and final determination of the criminal case facing them; and
6. Verification of the sureties and bond documents, shall be executed by the District Court Magistrate of Newala.



**I accordingly Order.**



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**P.J. NGWEMBE**

**JUDGE**

**27/3/2020**

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

**Right to appeal to the Court of Appeal explained.**



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**P.J. NGWEMBE**

**JUDGE**

**27/3/2020**