

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO. 41 OF 2020

(Original Economic Case No. 17 of 2020 filed in the Resident Magistrate's Court of Dar
Es Salaam at Kisutu)

1. Rahma Almas Mwinyi

2. Almasi Swedi@Malcon

3. Emmanuel Thomas Sonde APPLICANTS

4. Kelvin Athanas Soko

5. Samia Salehe Hujat

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of Last Order: 05.03.2020

Date of Ruling: 10.03.2020

Ebrahim, J:

This is an application for bail pending trial filed under the certificate of urgency. The application has been preferred under the provisions of Section **36(1)** of the **Economic and Organised Crimes Control Act**,

Cap. 200 R.E 2002 (the Act) as amended by the **Written Laws Miscellaneous Amendments Act No. 3 of 2016; and Section 148(3) and 392A of the Criminal Procedure Act, CAP 20 RE 2002.** The applicants collectively are praying for bail in respect of Economic Case No. 17 of 2020 pending at the Resident Magistrate's Court of Dar Es Salaam at Kisutu before honourable Issaya, SRM. The chamber application is supported by an affidavit of Mluge Karoli Fabian, Counsel for the Applicants.

Brief background of this application as could be discerned from the charge sheet and the affidavit appended herein with the application is that the applicants have been arraigned on economic case charged with three counts of unlawful possession of firearms **contrary to section 20(1) and (2) of the Fire Arms and Ammunition Control Act No. 2 of 2015 (the Act)** read together **with paragraph 31 of the First Schedule to and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap 200 RE 2002;** and the second count is unlawful possession of ammunitions contrary to **section 21(a)(b) and 60 of the Act read together with paragraph 31 of the first schedule and sections 57(1) and 60(2) of the Economic and Organized Crime**

Control Act, Cap 200 RE 2002 as amended. The third count is unlawful possession of armaments contrary to **sections 11(1) and 18 of the Armaments Control Act, Cap 246 RE 2002.**

It is alleged by prosecution that the applicants on 16th September, 2017 at Kisutu area within Ilala District, Dar Es Salaam region were found in possession of 2 firearms to wit UZI Gun wit serial No. 084912 and 064969 and RIFLE with erased serial number; Two (162) rounds of ammunitions of UZI GUN and Five rounds of ammunitions of RIFLE; and hand grenade without valid permit or licence or authorization.

At the hearing of this application, the applicants were represented by Mr. Mluge Karoli Fabian learned advocate; and the Republic was represented by Ms. Deborah Mcharo, learned State Attorney.

Submitting on behalf of the applicants, Mr. Fabian adopted the affidavit in support of application to form part of his submission and stated that since there is no certificate of conferring jurisdiction to the subordinate court to entertain the case, it is this court that has jurisdiction to entertain the bail application. He urged further in particular to the circumstances of the 1st applicant who is also charged with murder in another related case of

PI No. 19/2017 that the applicant is entitled to be considered for bail for the offence charged under this case because there is no any contravention of **section 36(4) (a) to (f) of the EOCCA, CAP 200**. Again no certificate has been filed by the DPP against the 1st applicant in terms of **section 36(2) and 36(3) of CAP 200**.

Ms. Mcharo, learned State Attorney did not have an objection on the application in respect of the 2nd, 3rd, 4th and 5th applicants. However, she challenged the grant of bail to the 1st applicant **in terms of section 36(4)(d) of CAP 200** that her release on bail shall hinder the on-going investigation in the murder charges that the 1st applicant is facing.

In brief rejoinder, Counsel for the applicants stressed that the result of denial of bail to the 1st applicant could jeopardize her chances of bail in-case she is acquitted in the murder charge because this Court would be rendered functus officio.

The meaning of bail has been well articulated by the Court of Appeal of Tanzania in the case of **The DPP Versus Bashiri Waziri and Another**, Criminal Appeal No. 168 of 2012, the holding that I fully subscribe to that:

"bail is a mechanism designed to ensure that a person who is subject to the strictures of the law stays out of confinement while the process of inquiry into his/her liability in the criminal process is being investigated, or if he has been charged in a court of law, his/her personal freedom is guaranteed before the end of the trial through him/her furnishing security as part of the undertaking to turn up whenever called up. The institution of bail therefore, falls on the positive side of the principle of presumption of innocence which we all cherish. As we remarked earlier, this principle can only be derogated from on public policy, and only when the public policy is backed by clear provisions of the law".

It follows that the purpose of arrest and putting the accused in custody is to secure his attendance during the trial and to ensure that he is available to receive and serve sentence if convicted. That being the spirit of the law; I am equally aware that a court with competent jurisdiction in its wisdom has discretion in granting bail to consider the nature of the offence and accused's person safety or protection – see **section 36 (4)(d) of CAP 200**. However the primary objective in granting bail is interest of justice to the accused as well as the complainant whilst being guided by the principle of presumption of innocence. It follows that if bail is not restricted by the

law, its denial need to be justified. Thus, an objection to granting bail should not be based on mere allegations or presumption.

As intimated earlier, the Republic do not oppose the application in respect of other applicants save for the 1st applicant on the reason that she is also facing a murder charge. Nevertheless, as correctly observed by the Counsel for the applicants, nothing has been exhibited to contravene the provisions of **Section 36(4)(a) to (f) of CAP 200** to warrant this court to deny bail to the applicants in particular the 1st applicant. More so the DPP has not filed a certificate to certify that there is likelihood of the interest or safety of the public to be jeopardized. If at all, in the mean-time the grant of bail to the 1st applicant would not have any effect to her conditioned freedom as the charge of murder she is also facing is restricted by the law to be availed bail. Again, need I repeat that, in the absence of any solid reasons, and not vague fears or apprehensions or suspicions on the interference with the investigation, bail should not be lightly refused. Thus, the 1st applicant is equally entitled to be considered for bail in the instant application that is before me.

Pursuant to sections **Section 36 (5) and (6) of CAP 200** and going back to para 7 and 8 of the affidavit filed in support of the

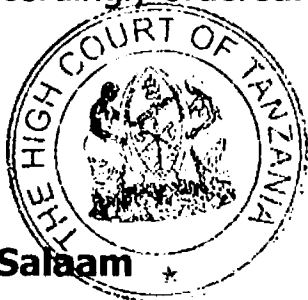
application for bail, it is averred that the applicants are residents of Dar Es Salaam regions and have reliable sureties who can guarantee and procure their attendance in court whenever required in respect of Economic Case 17 of 2020.

From the above background and pursuant to the above provisions of the law; and being an economic case, I hereby proceed to grant bail to all five applicants on the following conditions:

- (1) That the each applicant shall deposit in court a sum of Tshs. 10,000,000/- in cash (say Tanzanian shillings Ten Million only) (making a total of TZS 50,000,000/- as they are 5 applicants) **Or in the alternative** shall deposit to the custody of the court, a Title Deed(s) of the immovable property to the equivalent amount i.e. TZS 50,000,000/-.
- (2) That each applicant shall be required to provide two reliable sureties who shall be required to execute a bond of TZS. 2,000,000/- each (say Tanzania Shillings Two Million only) and shall ensure the applicant's attendance to court in respect of Economic Case No. 17/2020.
- (3) That each applicant shall be duty bound to appear in Court on all dates that shall be scheduled by the Court in Economic Case No. 17/2020 pending at Kisutu Resident Magistrate's Court.

- (4) That, each applicant shall immediately surrender his/her passport or any travelling document in his/her name to the Principal Resident Magistrate In Charge at Kisutu RM's Court.
- (5) That each applicant shall report to the Principle Resident Magistrate In charge at Kisutu Resident Magistrate's Court on each first Monday of the month.
- (6) That each applicant is hereby restricted to move outside the jurisdiction of this Court (High Court) without prior permission of the Senior Resident Magistrate assigned with the case; permission which shall not be granted without prior notice to the sureties.
- (7) Bail conditions to be ascertained/ verified by the SRM- Kisutu RM's court assigned with the case within 24 hours after the issuance of this order.

Accordingly ordered.



Dar Es Salaam

10.03.2020

A handwritten signature in black ink, appearing to read "R.A. Ebrahim".

R.A. Ebrahim

Judge