

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISC CRIMINAL APPLICATION NO. 4 OF 2020

In the matter of an application for

BAIL PENDING TRIAL

And

In the matter of Economic Case No. 28 of 2020

In the Resident Magistrates' Court of Dodoma at Dodoma

FADHILI ATHUMAN JUMA & 11 OTHERS APPLICANT

VERSUS

THE REPUBLICRESPONDENT

27/3/2020 & 3/4/2020

RULING

MASAJU, J.

The Applicant, Fadhili Athumani Juma, Chacha William Masese, Choji Batista Mtandi, Samo Ally Issack, Mwinyi Ramadhani Magina, Iddrissah Tunguhole, Master Ommary, Ismail Ambindwile, Francis Peter Ngozingozi, Joseph Wilson Bulinda and Baraka Phaustine Karuma, the 1st – 11th

Applicants respectively along with one Emmanuel Elisha who in the charge sheet is the 7th accused person, but has not applied for bail together and jointly have been indicted in Economic Case No. 28 of 2019 before the Resident Magistrates' Court of Dodoma Region severally and together as per the charge sheet thereof thus;

- i) The 1st count (interfering with Necessary Service) for the 4th and 5th Applicants.
- ii) The 2nd count (Interfering with Necessary Service) for the 6th, 8th and 10 Applicants,
- iii) The 3rd count (Interfering with Necessary Service) for the 1st, 9th and 11th Applicants,
- iv) The 4th count (Interfering with Necessary Service) for the 2nd and 3rd Applicants,
- v) The 5th count Interfering with Necessary Service) for Emmanuel Elisha (the 7th Accused person) and the 7th Applicant.

The economic offence of Interfering with Necessary Service (the 1st – 5th counts) were contrary to paragraph 12 of the First Schedule to; and Sections 57 (1) and 60 (2) of the Economic and Organised Crime Control Act, [Cap 200] read together with Section 3 (d) of the National security Act, [Cap 47].

- vi) The 6th count (Taking Unlawful Payment) for the 6th, 8th and 10th Applicants

- vii) The 7th count (Taking Unlawful payment) for the 1st, 9th and 11th Applicants,
- viii) The 8th count (Taking Unlawful payment) for the 2nd and 3rd Applicants and;
- ix) The 9th count (Giving Unlawful payment) for the 7th Applicant and Emmanuel Elisha (the 7th Accused person).

Hence the Chamber Summons Application which is made under sections 29 (4) (d) and 36 (1) of the Economic and Organised Crime Control Act, [Cap 200] supported by the Affidavit affirmed and sworn by the Applicants themselves for bail pending the trial and determination of the economic case against them.

According to the charge sheet the 4th and 5th Applicants are drivers of Motor vehicles. They allegedly did commit the economic offense along Mbeya – Makambako – Iringa – Dodoma Highways/Roads by intentionally driving motor vehicles with over load weight between the 14th and 31st day of October, 2019, an act which is likely to cause damage amounting to TSh. 14,000,000,000/=.

The rest of the Applicants save for the 7th and 7th Accused persons, that is to say, the 1st, 2nd, 3rd, 6th, 8th, 9th, 10th, and 11th Applicants' are all employees of Tanzania Roads Agency (TANROADS) severally and jointly based and working at Uyole Weigh bridge, Makambako North Weighbridge, and Wenda North Weighbridge along Mbeya – Makambako – Iringa –

Dodoma Highways/Roads where they allegedly severally and jointly committed the economic offences of Interfering with Necessary Service contrary to Paragraph 12 of the First Schedule to; and sections 57 (1) and 60 (2) and (3) of the Economic and Organised Crime Control Act, [Cap 200] read together with section 3 (d) of the National security Act, [Cap 47 R.E. 2002] the said Applicants allegedly permitted over load weight on the said Highways/Roads an act which on each count is likely to cause damage amounting to TSh 14,000,000/=.

The non-economic offences of Taking Unlawful Payment contrary to sections 20 (2) (a) and 21 (1) of the East African Community Vehicle Load Control Act, No. 1 of 2016 (the 6th – 8th counts); and Giving Unlawful Payment contrary to section 20 (1) (k) and 21 (1) of the East African Community Vehicle Load Control Act, 2016 (the 9th count) were also allegedly committed severally and jointly at the said Weighbridges (scene of crimes) along the Mbeya – Makambako - Iringa – Dodoma Highways/Roads.

The Applicants in their joint Affidavit depone on the facts and reasons for their eligibility for being admitted to bail pending the trial and determination of the economic case against them. The Respondent Republic contests the Application and she filed in the Court the counter affidavit to that effect as she deposed on the reasons for the Applicants' non eligibility for admission to bail on the otherwise bailable offence.

When the Application was heard in the Court on the 27th day of March, 2020 Mr. Samwe Shitambala, the learned counsel appeared for the Applicants who were also present. The learned Senior State Attorney, Ms. Lina Magoma, appeared for the Respondent Republic. The parties argued the Application alongside their averments in the Affidavit and counter affidavit, of which they adopted to form part of their submissions in support of, and against the Application in the Court. The Applicants prayed the Court to grant the Application whilst the Respondent prayed the Court to dismiss the Application accordingly.

The Applicants in their joint Affidavit neither state nor allude to the places where they were arrested. Section 29 (1) of the Economic and Organised Crime Control Act, [Cap 200] provides thus:

"29 (1) After a person is arrested, or upon the completion of investigations and the arrest of any person or persons, in respect of the commission of an economic offence, the person arrested shall as soon as practicable, and in any case within not more than forty-eight hours after his arrest, be taken before the District Court and the Resident Magistrate Court within whose local limits the arrest was made, together with the charge upon which it is proposed to prosecute him, for him to be dealt with according to law, subject to this Act."

That being the position of law, the Court sought clarification from the Applicants on the places they were arrested with a view to the Court

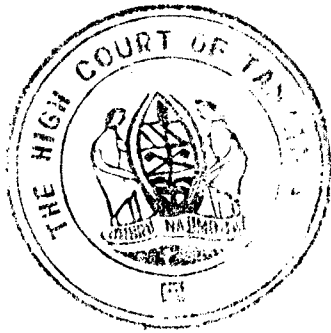
satisfying herself on whether or not she was seized with the local jurisdiction to hear and grant the Application pursuant to sections 29 (4) (d) and 36 (1) of Economic and Organised Crimes Control Act, [Cap 200]. The 1st Applicant (Fadhili Athuman Juma) informed the Court that he was arrested at Makambako, Njombe District on the 1st day of November, 2019. The 2nd Applicant (Chacha William Masese) informed the Court that he was arrested within Itringa Municipality on the 30th day of October, 2019. The 3rd Applicant (Choji Batista Mtandi) informed the Court that he was arrested at Wenda Weighbridge, Iringa on the 31st day of October, 2019. The 4th and 5th Applicants (Samo Ally Issack and Mwinyi Ramadhan Magwira respectively) informed the Court that they were arrested within Dodoma City on the 31st day of October, 2019. Iddrissah Tunguhole (the 6th Applicant) informed the Court that he was arrested at Uyole Weighbridge on the 1st day of November, 2019. The 7th Applicant (Master Ommary) informed the Court that he was arrested at Uyole, Mbeya on the 5th day of November, 2019, Ismail Ambindwile (the 8th applicant) informed the Court that he was arrested on the 5th day of November, 2019 within Mbeya Municipality. The 9th Applicant (Francis Peter Ngozingozi) informed the Court that he was arrested at Makambako Township on the 6th day of November, 2019. The 10th Applicant (Joseph Wilson Bulinda) informed the Court that he was arrested at Uyole on the 5th day of November, 2019 and the 11th Applicant (Baraka Phaustine Karuma) informed the Court that he was arrested at Makambako Weighbridge on the 6th day of November, 2019. This information by the Applicants on where their arrests were made was not controverted by the Respondent Republic.

Pursuant to section 29 (1) of the Economic and Organised crime control Act, [Cap 200], the Resident Magistrates' Court of Dodoma Region in which the Applicants have been indicted, lacks local jurisdiction to deal with the Applicants according to law save for the 4th and 5th Applicants whose arrests were made within Dodoma City. It follows therefore that this Court as well lacks power to hear and grant this bail Application, save for the 4th and 5th Applicants because the other Applicants' arrests were not made within the local jurisdiction of the Court namely, Dodoma Registry, of the High Court of the United Republic of Tanzania though the offence is bailable under sections 29 (4) (d) and 36 (1) of the Economic and Organised Crime Control Act, [Cap 200]. For that reason the Court hereby refrains from considering submissions made by the parties hereto.

Pursuant to the revisionary powers of the Court under section 372 (1) of the Criminal Procedure Act, the Court hereby nullifies and quashes the proceedings and orders in the Resident Magistrates' Court of Dodoma for illegality. The Respondent Republic shall consider section 29 (1) of the Economic and Organised Crime Control Act, [Cap 200] and deal with the Applicants accordingly in respect of their prosecutions, if any, in the District Courts or Resident Magistrates' Courts within whose local limits the Applicants' arrests were made, as soon as practicable.

That said, this Application for bail pending trial and determination of the economic crime case against the Applicants is hereby struck out of the Court accordingly.

It is hereby so ruled and ordered by the Court this 3rd day of April, 2020.




GEORGE M. MASAJU

JUDGE

3/4/2020