

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(BUKOB A DISTRICT REGISTRY)
AT BUKOB A**

MISCELLANEOUS CRIMINAL ECONOMIC APPLICATION

No. 17 OF 2020

(Arising from Economic Crimes Case No. 10 of 2020 of the Resident Magistrates' Court of Bukoba at Bukoba)

FRANK MUNEJA & ATHUMAN SABUNI ----- APPLICANTS

Versus

THE REPUBLIC ----- RESPONDENT

RULING

08/05/2020 & 11/05/2020

Mtulya, J.:

This is an application for bail (the Application) pending Economic Crimes Case No. 10 of 2020 (the case) before the Resident Magistrates' Court of Bukoba at Bukoba (the court). Frank Muneja and Athuman Sabuni (the Applicants) were arrested, charged and arraigned before the court on 15th April 2020 for damaging the property intended to be used for purpose of providing necessary services contrary to paragraph 20 (1), (2) (b) and (3) (a) read together with section 57 (1) and 60 (2) of the Economic and Organized Crimes Control Act [Cap. 200 R. E. 2019] (the Act).

The Applicants are also charged in the same case with stealing contrary section 258 (1) and 265 of the Penal Code [Cap. 16 R. E.

2019] (the Code) and corrupt transaction contrary to section 15 (1) (b) and (2) of the Prevention and Combating of Corruption Act [Cap. 329 R. E. 2019] (the Corruption Act).

On 20th April 2020, the Applicants hired the legal services of learned counsel Ms. Aneth Lwiza and instructed her to knock the doors of this court and file, appear and argue the Application on their behalf. The Application was attached with the certificate of urgency praying the Application be scheduled for hearing the earliest opportunity possible as the Applicants are suffering from various diseases, they have family depending on them and have no relatives in Bukoba.

In her Affidavit sworn in Bukoba on 17th April 2000, Ms. Lwiza stated that she could not apply for bail at the court because there is no certificate of the Director of Public Prosecutions conferring jurisdiction of the court and the value involved in the offences exceeds Tanzanian Shillings Ten Million (10,000,000.000/Tshs.).

When the case was scheduled for hearing on 8th May 2020, Ms. Lwiza submitted briefly that bail is a constitutional right and the offences under which the Applicants are charged are bailable under the Act. Ms. Lwiza submitted further that the Applicants are ready

and able to abide with bail conditions, including attending their case when called before the court. Finally, Ms. Lwiza cited the authority in section 29 (4) (d) of the Act and precedent of the Court of Appeal in **Director of Public Prosecutions v. Aneth John Makame, Criminal Appeal No. 127 of 2018.**

The submissions and arguments presented by Ms. Lwiza received no protest from the Republic, both in the authority of the law and precedent. However, Ms. Veronica Moshi, learned State Attorney prayed this court to grant bail according to the letters in the provisions of section 36 (5) and (6) of the Act, whereas Mr. Juma Mahona, learned State Attorney, prayed this court to consider the total amount involved in the offences, that is 55,123,185.67/=Tshs. in granting bail and surrender of Applicants' Passports and in case they do not have, they must swear affidavits to state so. Finally, Mr. Mahona prayed this court to restrict freedom of movement of the Applicants within Kagera Region as they were charged at the court in Bukoba.

Rejoining the submissions and prayers of the learned state Attorneys, Ms. Lwiza did not protest provisions of the law in section 36 (5) and (6) of the Act, but protested three things, *viz.*

interpretation on the total amount of money involved in the offences, public property and restriction of movements.

In the first protest, Ms. Lwiza contended that the Applicants were charged jointly with another person for the first and second counts and therefore the amount of money may be divided into three portions, whereas for the third count it is only the Applicants who were charged jointly where the amount of money can be divided into two. To Ms. Lwiza, applying that principle the total amount for the two Applicants will be less than 55,123,185.67/=Tshs.

In the second protest, Ms. Lwiza argued that bail application is a constitutional right which may not invite public interest as from the public properties, and finally she contended that the wording in section 36 (5) (d) of the Act does not restrict freedom of movement within court's jurisdiction. To her opinion, the Applicants are residents of Arusha and therefore their restriction be in their area of residence.

Having heard the submissions and contests of the learned minds in the present Application, let me start with the last contest on the wording of section 36 (5) (d) of the Act. For sake of easy reference of the contention in this regard, the said section must be recorded inhere:

*36 (5) Where the Court decides to admit an accused person to bail, it shall impose the following conditions on the bail, namely: (d) **restriction of the movement of the accused to the area of the town, village or other area of his residence** (emphasis provided).*

The main essential wording in the above text is: *other area of his residence*. This is literal meaning and I think may not waste much time of this court, unless there are ambiguities in the words. This, *other area of his residence* is mentioned by the Applicants, not learned State Attorneys. I think, to my opinion, it is about convenience place of the Applicants and standard measure must be from themselves, otherwise we will put them into another implied custody. I think I have to agree with Ms. Lwiza submission on this point.

However, I do not agree with Ms. Lwiza in the first and second protests. With the second, it is plain that economic offences are categorized so because of their nature, that of public interest. This is depicted even from discussion during enactment of the Act and decision in **Prof. Dr. Costa Ricky Mahalu & Another v. The Hon. Attorney General, Miscellaneous Civil Cause No. 35 of 2007.**

In this precedent, the court at page 33 of the Ruling, put it in this way:

*It is indisputable fact that **the Act was enacted for purpose of control and eradication of economic crimes with a view of protecting public property and national economy as a whole.** It is important legislation in view of challenges facing our growing economy...* (emphasis provided).

It is this purpose of the Act which defeats the second protest. The same purpose may be invited to conquer the first protest. In any case, the wording in section 36 (5) (a) of the Act states that:

*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...* (emphasis provided).

The law was enacted by the use of the word *shall* and states: *unless that person deposits cash or other property equivalent to half the amount or value of actual money or property involved.* This provision does not provide of persons charged, but half of the value of the property involved in the offence committed.

I understand the generally accepted principle of equal sharing of the total amount of value of the offence involved and the relevant precedent in **Silvester Hillu Dawi & Others v. Director of Public Prosecutions, Criminal Appeal No. 250/2006**, which propounded the principle of *sharing* the amount of value of money involved in an offence when determining bail conditions where there is more than one accused person facing the same charge (see also: **Abeid Mussa and Another v. Republic, Miscellaneous Criminal Application No. 9 of 2017 (HC -Tanga)**).

However, in the present case, the Applicants appear in three charges, of which two are joined with another person. Ms. Lwiza contends that for the two charges where Applicants have been jointly charged with another accused person, the value involved in the offences may be divided equal among the three accused persons. To my opinion, that is not within the letters in section 36 (5) of the Act

which require *cash or other property to be equivalent to half the amount or value of actual money or property involved* in the charged offence.

To my opinion, that is the intention behind enactment and protection of our public properties. The long title of the Act provides it all, and I will quote in part:

*An Act to make better provisions **for the control and eradication of certain crime and culpable non-criminal misconduct** ... and new penal prohibitions, the provision of **enhanced sanctions and new remedies**...* (emphasis provided).

It is this purpose behind the enactment which invited their Lordships in the decision of **Prof. Dr. Costa Ricky Mahalu & Another** (supra), to state, at page 30 and 31 of the Ruling, that:

*It is generally accepted that once an offence is bailable, the applicable principle requires that the conditions must be reasonable...However, when it comes to the application of the Act, any person regardless of his status in life can be charged. Once charged, **a person***

who does not have the requisite amount will have no option but to be deprived of his liberty not because the offence is not bailable but because he cannot meet the condition of depositing the requisite amount of money... (emphasis provided)

To my opinion, I think both the Act and precedents are on the value of money involved or to put it right requisite amount of money. In the present Application, for purposes of control and eradication of economic crimes to protect public property, the mandatory value of money involved is 55,123,185.67/=Tshs.

To my opinion, I think, apart from the three differences shown above, there was no disputes from learned minds that bail pending trial in economic cases is recognized in our mother law, the Constitution of the United Republic of Tanzania [Cap. 2 R. E. 2002] (the Constitution), the Act and practice of this court and our superior court, the Court of Appeal.

It is a constitutional right from the provisions of article 13 (6) (b) of the Constitution, legal right from the wording of section 29 (4) (d), 36 (1) & (7) of the Act and practice of our courts in **Director of**

Public Prosecutions (supra), Edward D. Kambuga & Another v. Republic [1990] TLR. 84] and Mathias Igninasi Michael @ Mishuti v. Republic, Miscellaneous Criminal Application No. 31 of 2019 (HC- Bukoba).

The provisions in section 36 (5) of the Act mandatorily require this court to impose the following conditions when deciding to admit accused persons to bail pending determination of their economic cases to the finality:

(a) Deposition of 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

(b) Appearance before the Court on a specified date at a specified time and place;

*(c) Surrender passport or any other travel document;
and*

(d) Restriction of the movement to the area of the town, village or other area of his residence.

This court also has discretionary mandate to impose any of the following conditions as they are provided under the provisions in section 36 (6) of the Act. These conditions are, to:

(a) Require the accused to report at specified intervals to a police station or other authority in his area of residence;

(b) Require the accused to abstain from visiting a particular locality or premises, or association with certain specified persons; or

(c) Any other condition which the court may deem it fit to impose which appear likely to result in the appearance of the accused for trial at the time and place required or as may be necessary in the interest of justice or for the prevention of crime.

It is fortunate that these provisions have already received judicial interpretations of this court and the Court of Appeal and presently there are plenty of precedents in our jurisdiction (see: **Abdallah A. Msongela and Two Others v. Republic, Misc. Economic Application No. 14 of 2007, Edward D. Kambuga &**

Another (supra), Director of Public Prosecutions (supra), Mwita Joseph Ikohi & Two Others v. Republic, Criminal Appeal No. 60 of 2018, Juma Kambi Kong'wa & Another v. Republic, Misc. Economic Cause No. 16 of 2017 and Fausta Gaitan Lumoso & Three Others v. Republic, Misc. Economic Cause No. 40 of 2017).

All being said and reasoned, I think I am going to allow the Application for bail to the Applicants. However, as it was revealed in this Ruling that the conditions under the provisions of section 36 (5) (a) – (d) of the Act are mandatory and must be followed without any qualification whatsoever. Nevertheless, this court, under the provision in section 36 (6) of the Act, has discretionary powers to impose any conditions which may deem it fit for the Applicants to appear to the court for mention or hearing of the case at the time and place as may be necessary in the interest of justice (see: **Edward D. Kambuga & Another** (supra)).

Again, as I stated in this Ruling that it is generally acceptable in an application like the present one, where you have two applicants praying for bail pending their case, to apply the principle of sharing the amount of value of money or property involved. I think I will

employ the principle to the extent of what I stated in this Ruling for purposes of bail conditions.

Consequently, for reasons given above and in the interest of justice, I admit the Applicants to bail as I hereby do so and the Applicants will be released upon fulfilling the following listed conditions:

1. Each Applicant to surrender his passport or any other travelling document, if any, to the Regional Crimes Officer, Kagera Region; If the Applicants do not possess the same, they must register Affidavits stating so in the office of Resident Magistrate In Charge of Resident Magistrates' Court of Bukoba at Bukoba, Kagera Region;
2. Each Applicant shall report to the Resident Magistrate In Charge of Arusha Resident Magistrates' Court at Arusha, Arusha Region once in every last Monday of a month and sign a specific register, if need be;
3. Each Applicant shall not travel out of Arusha Region without prior written leave of the Resident Magistrate In-Charge of Arusha Resident Magistrates' Court at Arusha, Arusha Region;

4. Each Applicant should have two sureties, and one must be employee of the government, local government, government agency, or any other organization recognized under the law and must be resident of either Arusha or Kagera Region;
5. Each Applicant's sureties should bring letters from their employers and their respective copy of identity cards;
6. Each Applicant's sureties should produce in court letter of introduction from his respective street/village chairman;
7. Each Applicant must enter appearance in the court on every date when the case is scheduled for mention, hearing or any other order or direction of the court;
8. Each Applicant's sureties shall undertake to make sure that his Applicant is available and enter attendance in court whenever required;
9. Each Applicant has to deposit cash in sum Tanzanian Shillings Twenty Eight Million (28,000,000/=) or immovable property equivalent to Tanzanian Shillings Twenty Eight Million (28,000,000/=); In case any of the Applicants decides to


deposit immovable property, he shall deposit title deed supported by Valuation Report from the Government Valuer;

10. Each Applicant's sureties must sign a bond of sum of Tanzanian Shillings Fourteen Million (14,000,000/=) as a security for appearance of the Applicant in the court; and

11. The above ordered bail conditions shall be supervised and sureties certified by the Deputy Registrar of this court, except those expressly stated in paragraphs, namely 2, 3 and 4.

This Application is granted with no order as to costs. It is accordingly ordered.




F. H. Mtulya

Judge

11/05/2020

This Ruling was delivered in Chambers under the seal of this court in the presence of the learned State Attorney, Ms. Veronica Moshi for the Republic and in the presence of the Applicants Mr. Frank Muneja and Athuman Sabuni represented by learned counsel Ms. Aneth Lwiza.



F. H. Mtulya

Judge

11/05/2020