

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA

MISCELLANEOUS CRIMINAL APPLICATION No. 10 OF 2021

NYAJIRARI JOSEPH @ NYAJIRARI APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

*(Originating from Economic Case No.12 of 2021 in the District Court of
Musoma District at Musoma)*

RULING

5th February, 2021

Kahyoza, J

Nyajirari Joseph @ Nyajirari, (the applicant) filed an application seeking to be admitted on bail under section 36(1) & (5) of the **Economic and Organised Crime Control Act**, [Cap. 200 R.E. 2019], (the **EOCCA**).

I wish to point out that Miscellaneous Criminal Application No. 07 of 2021, Miscellaneous Criminal Application No. 07 of 2021, and Miscellaneous Criminal Application No. 10 of 2021 are similar in everything. I invited the parties to address me whether or not I may consolidate them. The State Attorney strongly opposed to the proposal. I did not find any ground for not doing so. I declined to consolidate them but composed similar rulings with very slight differences.

The applicant is charged with, among other offences, the offence of leading organized crime contrary to paragraph 4(1) of the first Schedule to

and section 57(1) and 60(2) of the **EOCCA**, thus he is charged with an economic offence. The charge discloses the value of the property involved as Tzs, 1,613,250/=.

Before the hearing commenced, I invited the applicant and the respondent State Attorney Mr. Temba to address me on the following issues:

1. Whether the subordinate court has no jurisdiction to grant bail to the applicant (the accused person); and
2. Whether the application for bail was properly filed under S. 36(1) & (5) the EOCCA.

The applicant submitted in relation to the first issue that this Court has jurisdiction to grant bail in economic offences where the value of property involved exceeds Tzs. 10,000,000/=, that the district court told him that it has no jurisdiction to give them bail. He applied to this Court for bail on the advice from the district court. As expected, the applicant, a lay person had nothing to comment on the second issue.

The State Attorney Mr. Temba replied that subordinate courts have jurisdiction to grant bail to an accused person charged with economic cases where the value of the property involved is from zero to ten million Tanzanian shillings. For that reason, the district court has jurisdiction to entertain the current application.

Regarding the second issue, Mr. Temba, State Attorney submitted that S. 36(1) &(5) of the EOCCA does not give mandate to the High Court

to entertain the application for bail. He added that this Court was not properly moved.

There is no dispute that bail in economic offences is governed by section 29(4) of the EOCCA which provides as follow:-

(4) 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 purposes of this section the power to hear bail applications and grant bail-

*(a) **between the arrest and the committal of the accused** for trial by the Court, **is hereby vested in the district court and the court of a resident magistrate if the value of any property involved in the offence charged is less than ten million shillings;***

(b) after committal of the accused for trial but before commencement of the trial before the court, is hereby vested in the High Court;

(c) after the trial has commenced before the Court, is hereby vested in the Court;

(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.

Given the above position of the law, it is obvious that **district court and the court of a resident magistrate** have jurisdiction to entertain an application for bail in economic cases where the value of the property involved, does not exceed Tzs. **10,000,000/=**. In the instant case, the value of the property involved is Tzs, 1,613,250/= which is below the threshold of the High Court to consider an application for bail. I, concur with the State Attorney that in this case the district court and the court of a resident magistrate have jurisdiction to entertain an application for bail.

Given the above observation, I find that this application was wrongly filed in this Court and this Court has no jurisdiction to entertain an application for bail where the value of the property involved is less than Tzs. 10,000,000/=. I fortified in my finding by the decision of the Court of Appeal in the case of **Mwita Joseph Ikohi and 2 others v. R.** Criminal Appeal No.60/ 2018 where it held that-

*"The essence of the above-quoted subsection is that it vests in different courts the power to hear and determine bail applications under the EOCCA depending on the stage the proceeding concerned has reached as well as the value of the property involved in the offence charged. **For a start, section 29 (4) (a) empowers the district court and the court of a resident magistrate to hear and determine bail applications between the arrest and the committal of the accused for trial by the "Court" if the value of any property involved in the offence charged is less than Ten Million Shillings.** While in terms of section 29 (4) (b) the granting of bail after committal of*

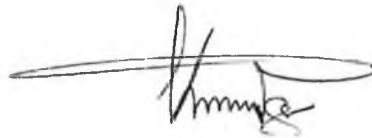
the accused for trial but before commencement of the trial before the court is vested in the High Court regardless of the value of the property involved, after commencement of the trial in the "Court", jurisdiction is vested in the "Court" in terms of section 29 (4) (c), again regardless of the value of the property. It should be noted that the word "Court" in terms of section 2 of the EOCCA means the Corruption and Economic Crimes Division of the High Court established under section 3 as amended by section 8 of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016. Of particular interest and relevance in this matter is section 29 (4) (d). It confers on the High Court the jurisdiction to grant bail 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 in the Corruption and Economic Crimes Division of the High Court.

The above done, I now move to the second issue whether the application for bail was properly filed. The application for bail was instituted under S. 36(1) & (5) only of the **EOCCA**. The applicant did not address this issue as it legal issue. The respondent's State Attorney submitted that it was improper to lodge an application for bail under section 36(1) & (5) of the **EOCCA**, as the section do not mandate the High Court to consider an application for bail. I have no reason to differ with him. Section 36 of **EOCCA** stipulates restrictions and conditions to be considered by courts exercising power to grant bail under section 29(4) of the **EOCCA**. The Court of Appeal in the **Mwita Joseph Ikohi and 2 Others v. R** (supra) stated that "**consequently, in the instant case section 36 (1) of the EOCCA could not on its own be the source of the bail granting**

jurisdiction on the part of the lower court". I therefore, find that this Court was not properly moved.

In the upshot, having found that this Court has no jurisdiction to entertain this application and that it was wrongly moved, I invoke my powers of revision under section 372 of the **Criminal Procedure Act**, (Cap. 20 R.E. 2019) to strike out the application and direct the district court to entertain the application for bail.

It is ordered accordingly.



J. R. Kahyoza

JUDGE

05/02/2021

Court: Ruling delivered in the presence of the applicant via virtual court and the absence of the Respondent. Ms. Catherine Tenga present.




J. R. Kahyoza
JUDGE
05/02/2021