

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

MISC. CRIMINAL APPLICATION NO. 04 OF 2021

(Originating from the Resident Magistrate Court of Lindi at Economic Crime Case No. 10 of 2020).

IBRAHIM MUSSA TWAHILI.....1ST APPLICANT

SALUM LUNGALA MCHICHA2ND APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Hearing date on: 10/02/2021

Ruling date on: 12/02/2021

NGWEMBE, J:

The applicants through their advocate Jeston Justin Mzihwi are in this court seeking bail pending hearing and final determination of Economic Crime Case No. 10 of 2020, preferred against them in the Resident Magistrate Court of Lindi. The two are charged for four counts of Leading Organized Crime, contrary to paragraph 4 (1) (b) of the first schedule to, and section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act (Cap 200 R.E. 2019); Arson contrary to section 319 (a) of the Penal Code Cap

16 R.E. 2019); Malicious damage to property contrary to section 326 (1) of Penal Code; and the last count is like the third count.

The particulars of the offence indicate that the applicants were involved in setting fire to a dwelling house of Ahmad Salum Makoronganya valued 11 780,000/= shillings, damaging a motor vehicle bearing registration no. T 395 DHD make Toyota Porte property of Ahmad Salum Makoronganya valued at TZS. 14 million, and unlawful damage to rear wind screen and combination light glass of motor vehicle with registration No. T 5985 AKU make Suzuki Escudo property of Ahmad Salum Makoronganya valued at TZS 700,000/=.

The aggregate value of the alleged damaged properties constitutes TZS 26,480,000/=. At the end the applicants, were arraigned in the Resident Magistrate Court of Lindi, charged accordingly. However, they jointly preferred this application for bail in this court. The chamber summons is backed by sections 29 (4) (d) and 36 (1) of the Economic and Organized Crime Control Act and section 148 (1) of the Criminal Procedure Act Cap 20 R.E. 2019. An affidavit in support to application was sworn by the learned advocate which same was adopted on the hearing date.

Briefly, the counsel for the applicants argued that the applicants, have reliable sureties with properties capable to comply with bail conditions. That they promise to attend their case to the final disposal. Above all the first applicant is still a young boy of just 18 years old while the second applicant is 55 years old who at that age is require to be with his family.

In turn, the Republic/respondent did not resist the application for bail and did not even file counter affidavit against it, but insisted that the applicants may be bailed out accordance to the conditions set forth by law.

Having perused the chamber summons and its supporting affidavit, together with brief submissions of learned counsels, the question is whether the applicants should be bailed out pending their final determination of the economic crime case facing them. The applicants are facing criminal accusations, which are bailable.

As a general principle, bail is a right preserved in the constitution of United Republic of Tanzania to whoever accused on bailable offence. The court through various precedents has developed an acceptable principles governing bail conditions. Bail conditions should not depend on the ability of the accused person to comply with, but they are fixed to ensure that the accused person compels him to be available all time when his case is heard to the end. Thus, bail conditions should be realistic, reasonable and capable of being complied with.

However, accusations on economic crimes, the law has taken discretionary powers of the court to set bail conditions based on the circumstances of each case. Instead, the legislature has codified those conditions into law. Section 36 (5) of the Act as amended by the Written Laws (Misc. Amendments) Act No 3 of 2016, provide bail conditions which must be complied with. The section is 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 are mandatory, the term used is "shall" meaning must be complied with. The court has no discretion to depart from them. Unfortunate the applicants are caught in the web of this section which they have to comply.

The applicants through the affidavit of their learned counsel have assured this court in paragraph 7 that they are ready and capable to comply with all bail conditions. With that assurance in the affidavit, 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 commit breach of peace and tranquility in the society.

In the premise, the applicants **Ibrahim Musa Twahili and Salum Lungala Mchicha** are hereby admitted to bail as prayed in the Chamber Summons. Being guided by section 36 (5) of Economic and Organized Crimes Control Act, and considering that the value of money involved in the offence facing them are above ten million shillings, and the cited section provide mandatory conditions thereto, therefore, the grant of bail to the applicants are subject to the fulfilment of the following conditions:-

1. Each applicant shall deposit **TZS 6, 000,000/=**, This amount is arrived after considering the accusations preferred against the applicants and the bail conditions set forth in the law cited above. It is a legal requirement that each person has to deposit half of the amount involved in the charge sheet or deposit **Title Deed** of immovable properties having similar value or more value located in

- any cities in Tanzania or in Mtwara Municipality or Lindi Municipality or Masasi township or Nachingwea township.
2. Each applicant must provide two reliable sureties; each surety should execute a bond valued **four million only**. Preferably one surety may be an employee of any reliable institution or company;
 3. Each applicant shall not leave the jurisdiction of the Region of Lindi without permission from the Resident Magistrate incharge of Lindi Resident Magistrate Court;
 4. Each applicant shall surrender his passport, if he has, and any other travelling document to the Resident Magistrate incharge of Lindi Resident Magistrate Court.
 5. Applicants are mandatorily compelled to appear in court at any time when they are required for hearing and final determination of their criminal case; and
 6. Verification of sureties and bond documents shall be executed by the Resident Magistrate incharge of Lindi Resident Magistrate Court.

I accordingly Order.



P.J. NGWEMBE

JUDGE

12/02/2021

Court: Ruling delivered at Mtwara in Chambers on this 12th day of February, 2021 in the presence of learned State Attorney Mr. Gideon



Megesa and in the presence of Mr. Jeston Justin Mzihwi advocate for the applicants.

Right to appeal to the Court of Appeal explained.



P.J. NGWEMBE

JUDGE

12/02/2021

