

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 10 OF 2021

**(Arising from Economic crimes case No.2 of 2021, in the District Court of
Mbeya at Mbeya)**

DURGA RAJU VASARLA.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

11&15/2/2021

NDUNGURU,J.

This is a ruling on application for bail pending trial in an Economic Case No. 2 of 2021 before the District Court of Mbeya at Mbeya. The applicant in this matter is one DURGA RAJU VASARLA. The applicant has moved this court by way of Chamber summons supported by affidavit duly sworn by the applicant himself. This application is made under sections 29(4)(d) and 36(1) of the Economic and Organized Crimes Control Act(Cap 200 R.E 2019)and section 148(1)(2) (3) of Criminal

District Court Act (Cap 200 R.E 2019)

Essentially, the affidavit deponed as herein: that the applicant is charged before the District court with offence of Storing of Products in Unregistered Premises contrary to section 18(1) and (4) of the Tanzania Food, Drugs and Cosmetics Act, 2003 read together with Paragraph 29 of the 1st Schedule to and Section 57(1) and 60(2) of the Economic and Organized Crimes Control Act, (Cap 200 R.E 2019). The value of the subject of the case is **360,588,750/=** the amount is above the value which the District court can entertain bail.

The applicant further averred that he has reliable sureties with fixed place of living and valuable movable and immovable properties. He is also ready to abide with bail conditions imposed to him. But of more important, the applicant has stated that the offences he is charged with are bailable in the eyes of law.

Initially, the respondent/Republic objected bail through counter affidavit sworn by Mr Hebel Kihaka, learned State Attorney. When the application was called upon for hearing, Ms Constancia Peter, learned counsel represented the applicant. On the other hand Mr Saraji Iboru, learned senior State Attorney represented the respondent Republic. In her submission in support of the application, the learned counsel for the applicant expounded what is contained in the applicant's affidavit as

summarized herein above, insisting that the offences the applicant is facing are bailable. Further that this court has jurisdiction to entertain the application. Further that the court be pleased to apply sharing principle in determining the amount to be deposited because the applicant has been charged with another person. That means they are two in the charge sheet.

In his submission, Mr. Saraji learned senior State Attorney had no objection to the application. He said the court has jurisdiction to entertain the application and is properly moved. He only urged this court to observe the law particularly section 36(4) (e) of the EOCCA which dictates the applicant to deposit half of the sum involved in the charge sheet. He added that sharing principle may be applicable as there are two accused persons in the charge sheet. Ms. Constanca Peter had nothing substantial to rejoin apart from reiterating her submission in chief and underscoring the prayers sought in the chamber summons.

I have considered the record, submissions of the parties and the law. It is clear that, the facts deposed in the affidavit are not disputed since the respondent totally supported the application at the hearing date. This course, in my view, amounted to an abandonment of the previously filed counter affidavit mentioned above.

The following positions of the law are also not disputed by the parties: that, offences with which the applicants are charged are bailable. This court, and not the lower court, has jurisdiction to entertain bail applications of this nature (where the value of the subject matter is ten million Tshs. or more). This position was also supported by the Court of Appeal of Tanzania (CAT) in the case of **Director of Public Prosecution v. Aneth John Makame, Criminal Appeal No. 127 of 2018, CAT at Dar es salaam** (unreported). The stance of the law was further underscored by this court (My brother Mallaba, J as he then was) in **Salim s/o Majaliwa @ Mbengwa and 4 others v. Republic, Misc. Criminal Application No. 228 of 2018, High Court of Tanzania (HCT), at Tabora** (unreported).

It is also a clear position of our law that, bail is both a statutory and constitutional right for an accused person. The purpose of granting bail to an accused person is to let him enjoy his freedom as long as he shall appear in court for his trial; see **Hassan Othman Hassan @ Hassanoo v. Republic, Criminal Appeal No. 193 of 2014, CAT at Dar es salaam** (unreported). There is thus, no reasonable grounds for denying bail to the applicants in the matter at hand. It is more so

considering the fact that, their application is not objected by the respondent/Republic.

A question that arises here is this; which amount of cash (or property valued at which tune) that the applicants will be required to deposit if granted bail? As it has been correctly submitted by Mr. Iboru, learned SSA, the applicant stand charged jointly with another person before the lower court. They are thus, entitled to benefit from "the Principle of sharing". This principle was promulgated by the CAT in the case of **Silvester Hillu Dawi and another v. DPP, Criminal Appeal No. 250 of 2006, CAT, at Dar es salaam** (unreported). It guides that, where more than one person are charged with an offence of the nature mentioned above, then the amount to be deposited as bail condition should be shared among the accused persons for purposes of bail.

It follows thus that, by simple arithmetic, half of the amount involved in the charge sheet (i.e. Tshs. 360,588,750/= mentioned above) is Tshs. 180,294,375/= (One hundred eighty Million, Two Hundred and ninety four Thousand only). When one equally divides this amount to the two accused persons according to the above highlighted principle of sharing, each of them shall be required to deposit Tshs.

90,147,180/= (Ninety Million, One Hundred and Forty Seven Thousand, and Two Hundred and Fifty only).

Due to the above reasons, I find that, the applicants are entitled to the prayed bail. I accordingly, grant bail to the applicants on the following conditions which are mandatory as per section 36 (5) (a)-(d) of the EOCCA:

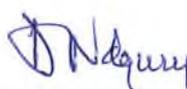
- a. That, the applicant shall deposit cash Tshs. 90,147,180/= (Ninety Million, One Hundred and Forty Seven Thousand, and Two Hundred and fifty only) or property worth that sum. The rest of amount of Tshs. 90,147,180/= (Ninety Million, One Hundred and Forty Seven Thousand, and Two Hundred and fifty only) apart from the deposited amount or property valued at that sum, with two sureties (each) at the like sum.
- b. The applicants' sureties shall be residents within Mbeya Region which is the geographical jurisdiction of the lower court.
- c. In case the applicant will opt to deposit immovable properties in compliance with the condition set above, it shall be sufficient for them to deposit title deeds accompanied with valuation reports. If the title deeds will not be available, they shall adduce sufficient evidence to prove that their respective immovable properties

actually exist including valuation report showing the value of the property.

- d. That, the applicant shall appear before the lower court on specified dates, time and place.
- e. He shall also surrender his respective passport or any other travel documents (if any) to the Deputy Registrar of the High Court (Mbeya), and
- f. He is restricted from travelling outside Mbeya Region (being the territorial jurisdiction of the lower court), unless written leave is granted by the Deputy Registrar who will serve a copy of the said leave to the lower court.

The sureties envisaged under the conditions of bail set above shall be approved by the Deputy Registrar of this court. It is so ordered.




D.B. Ndunguru
JUDGE
15/02/2021