

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. CRIMINAL APPLICATION NO. 02 OF 2021

(Arising out of Economic Case No. 66/2020 from Bariadi District Court)

MASANJA PETERAPPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

18th March 2021 & 18th March, 2021

MKWIZU, J.:

This is an application for bail consideration made under Article 13(6) (b) and 15 of the Constitution of the United Republic of Tanzania as amended time to time, sections 29 (4) (d), of Economic and Organized Crimes Control Act Cap 200 R.E. 2019, and section 148 (3) and (5) of the Criminal Procedure Act (Cap 20 R E 2019) The application is supported by an affidavit sworn by the applicant.

When the matter came for hearing, applicant had the services of Mr Samweli Lugundiga learned advocate while respondent /Republic had the services of Mr. Enosh Gabriel Kigoryo, learned State Attorney.

Mr. Lugundiga first prayed to adopt the applicant's affidavit to form part of his submissions. He in addition stated that, applicant is a person known in his locality, with no blemished records. He stressed that, the right to bail is a constitutional right and because the offence with which the applicant is charged is bailable then the court should be minded to granting the orders sought on terms and conditions that the court may deem fit and of which the applicant is ready to comply.

On his part, Mr. Kigoryo, learned State Attorney had no objection to the bail application. He however, queried the citation of Article 13(6) (b) and 15 of the Constitution of the Republic of Tanzania and section 148 of the CPA, Cap 20 R.E 2019. He argued that these provisions are not applicable under the circumstances of this matter but added that the application is not vitiated as the wrong citation were cited along with the proper provisions of the law.

Having so said, Mr. Kigoryo, the learned State Attorney urged the court to take into account the provisions of section 36 (4) of the Economic and Organized Crimes control Act, Cap 200, R E 2019 in the event the application is allowed.

I have ardently considered the application and the parties' submissions. Indeed, chamber summons was preferred under among other provisions, article 13 (6) (b) and 15 of the constitution and section 148(3) and (5) (a) (ii) and (iii) of the Criminal Procedure Act (Cap 20 R E 2019). I have read the provisions above, they are not the enabling provisions so to say as far as this application is concerned. Nevertheless, the application is competent. This is because, applicant has in his application cited section 29 (4) (d) of the Economic and Organized Crimes control Act, Cap 200, R E 2019 which empowers this court to grant the application of this nature. See for instance the decision of the Court of appeal in **Advatech Office Supplies ltd V. Ms Farhma Abdullah Noor and Another** Civil Application No 354/16/2017.

In Economic case No. 66 of 2020 applicant is charged with stealing C/S 258 (1) (2) (a) and 265 of the penal code. He was in the alternative, charged in the second count for unlawful possession of property suspected of having been stolen or unlawful acquired contrary to paragraph 7 (1) (b) of the First schedule to section 57 (1) and 60 (2) of the Economic and organized crime Controls Act, Cap 200 R,E 2019. There is no doubts that both counts above are bailable offences. It is also correct as submitted by the applicant counsel

that bail is a right of an accused person. This right is an articulation of Article 13(6) of the Constitution of the United Republic of Tanzania, rooted on the principle of presumption of innocence that every accused person is presumed innocent unless otherwise proved. That couple with the fact that respondent expressed no objection to the prayer, meaning that the applicants records is clean as asserted to by the applicant's counsel, I find nothing to prevent the court from granting the orders sought. I for that reason find the application justified.

Having evaluated the offence with which the applicant is charged, the chamber summons, the affidavit in support of the application, parties' submissions, and guided by section 36 (5) and (6) above, applicant is granted bail on the following conditions.

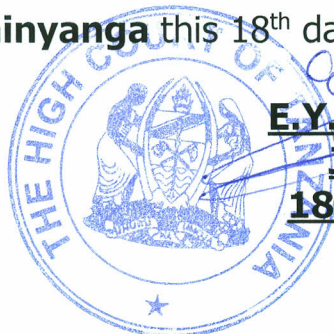
1. The applicant shall deposit cash TZS 8,000,000/= or deposit Title Deed of immovable properties having similar value or more value located in Simiyu Region or in any other cities in Tanzania;
2. The applicant must provide two reliable sureties who are to execute bonds valued TZS. 5,000,000/= each.

3. Each surety should produce in court, his/her National Identity card and a letter of introduction from their respective street or village chairpersons.
4. The Applicants' sureties shall undertake to make sure that the Applicant is available and attend court proceedings whenever required;
5. The applicant should surrender his passport, if he has, and any other travelling documents to the Bariadi District Magistrate;
6. The applicant should not leave the jurisdiction of the District Court of Bariadi without prior permission from the District Magistrate;
7. The applicant is compulsorily bound to appear in court at any time when he is required for hearing.

Verification of the sureties and bond documents shall be executed by the District Resident Magistrate, Bariadi District Court.

It is so ordered.

DATED at Shinyanga this 18th day of March 2021.



E.Y. MKWIZU

JUDGE

18/3/2021