

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. CRIMINAL APPLICATION NO. 2 OF 2021

**(Originating from Mbeya Resident Magistrate's Court at Mbeya Eco. Crime
Case No. 21/2020)**

1. ZUNGU PAUL @ TINYA

2. BARAKA LAZARO CHUNGWA }APPLICANTS

VERSUS

THE REPUBLICRESPONDENT

RULING

15&24/03/2021

NDUNGURU, J.

This is a ruling on application for bail pending trial in an Economic Case No. 21 of 2020 before the District Court of Mbeya at Mbeya (the lower court). The applicants in this matter are two, namely; ZUNGU PAUL @ TINYA and BARAKA LAZARO CHUNGWA (the first and second applicant respectively). They moved this court by way of Chamber summons, for bail under sections 29 (4) (d) and 36 (1) of the Economic and Organized Crimes Control Act, Cap 200 R.E. 2002, (the EOCCA) and

any other enabling provisions of law. **The application is supported by two affidavits, one jointly affirmed by the first and second applicants, while the other was sworn mutually by the .**

Though the affidavits supporting the application are two, their contents are similar. In essence, the affidavits deposed as follows; that, the applicants are jointly and together charged before the lower court with unlawful possession of government trophies contrary to section 86 (1) and (2) (c) (iii) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 (1) of the First Schedule to and sections 57 (1) and 60 (2) of the EOCCA. The value of the involved trophies is **Tshs. 34,482,000/= (Thirty Four Million Four Hundred and Eighty Two Thousand only)**. The amount is above the value of property for which the lower court can entertain bail. The applicants also have reliable sureties with fixed places of living, valuable movable and immovable properties. They are ready to observe all bail conditions that may be set by the court.

It must be noted here that, the EOCCA was in fact, amended by section 10 of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016 (Act No. 3 of 2016) though the copy of the charge sheet attached to the affidavits did not disclose this fact. It is also alleged in

the particulars of the offence that, on the 19th day of August, 2019 at Lupa tingatinga area, within Chunya District Region of Mbeya, the two applicants were found in possession of Government Trophies to wit; one (1) piece of Elephant Tusk worth USD 15,000 equivalent to Tshs. 34,482,000/= property of the United Republic of Tanzania without permit from the Director of Wildlife.

When the application was called for hearing, the applicants appeared in person. On the other hand, Mr. Hebel Kihaka learned State Attorney represented the respondent/Republic. At hearing date, Mr. Hebel Kihaka (SA) informed this court orally that, the respondent was not objecting the application. He only urged this court to be observe the law by fixing bail conditions requiring the applicants to deposit half of the sum involved in the charge sheet or property valued at that tune. He added that, the applicants may share the value as they are four. He supported the legal requirements by citing section 36 (4) (e) of the EOCCA. The applicants had nothing to re-join apart from underscoring the prayers sought in the chamber summons.

I have considered the record, submissions by the parties and the law. It is clear that, the facts deponed 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 previous filed counter affidavit mentioned above. Moreover, the following matters of facts are not disputed; that, according to the particulars of the applicants in a copy of the document attached with the copy of the charge sheet to the affidavit supporting the application, all applicants are peasants. The applicants reside at Lupa tingatinga, Chunya District, Mbeya Region.

The following positions of the law are also not disputed by the parties: that, offence with which the applicants are charged are liable. 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, 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 the applicants stand charged jointly, 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. 34,482,000/= mentioned above) is Tshs. 17,241,000/= (Seventeen million, two Hundred and Forty one 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 Tshs8,620,500/= (Eighty Million, Six Hundred and Twenty Thousand and Five Hundred and Fifty only).

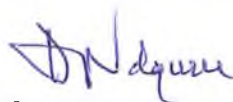
Due to the above reasons, I find that, the applicants are entitled to the prayed bail. I accordingly, grant bail to the applicants on the following conditions which are mandatory as per section 36 (5) (a)-(d) of the EOCCA:

- a. That, the applicant shall deposit cash Tshs. 8,620,500/= (Eighty Million, Two Hundred and Twenty Thousand, Five Hundred and Fifty only) or property worth that sum. The rest of amount of Tshs. 17,241,000/= (Seventeen Million, two Hundred and Forty one Thousand only) shall be secured by execution of bonds by the applicants. Each applicant shall therefore, also execute a bond at the tune of Tshs. 8,620,500/- (Eight Million, Six Hundred and twenty Thousand and Five Hundred 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

23/03/2021



ORIGINAL