

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

MISC. CRIMINAL APPLICATION NO. 6 OF 2021

*(Arising from Economic Crime Case No.13 of 2021 pending in Tabora
Resident Magistrate Court)*

MOHAMED S/O ABDALAH @DESOUZAAPPLICANTS

MELKIAD S/O JUAKALI @MSIGWA

VERSUS

REPUBLICRESPONDENT

RULING

Date: 1/3/2021-5/2/2021

BAHATI, J.:

By way of chamber summons made under the provisions of Section 29(4)(d) and 36(1) and (7) of the Economic and Organized Crimes Control Act, Cap.200 (EOCCA)as amended by Written Laws (Misc. Amendments) Act no.3 of 2016 and any other enabling provision of the laws),

- I. This honorable court be pleased to grant bail to the applicants pending the determination of the economic crime case no.13 of 2021 in the Resident Magistrate's court of Tabora at Tabora.

The application has been supported with an affidavit sworn by Mr.Kanani A.Chombala, learned counsel for the applicants.

It was evident from the second paragraph of the affidavit that the applicants were arraigned on 18th February, 2021 before Resident Magistrate's Court of Tabora allegedly among other things to cause loss to a specified authority to the tune of TZS sixty million six thousand three hundred eight two and forty cents only (60,066,382.40/=)

It is not in dispute that the Resident Magistrate's Court has no jurisdiction to try the offence and to entertain any bail application. It is the High court with vested jurisdiction to deal with the application for bail in all economic offences where the value of any property involved is ten million shillings or more.

Both parties are not disputing that the applicant has a right to apply for bail for the reason of exercising his constitutional rights and presumption of innocence.

In this case, the respondent objected to the application through the counter affidavit of John Mkonyi, State Attorney.

During the hearing of this application, Mr. Kanani Chombala, counsel for the applicant while Mr. John Mkonyi, State Attorney for Republic.

The counsel for the applicant had no much to say since he prayed to this court to adopt the affidavit to form part of his submission. He submitted some authorities to substantiate his application. He cited the cases of **Salim s/o Majaliwa @ Mbengwa, Misc. Criminal Application**

No. 228 of 2018 unreported, Safari vs. Republic 1972 HCD 72. Also in Ratex Vs. Republic [1971 – HCD 391] in Mohamed Masoud Vs. Republic [Misc. Criminal Application No. 110 of 2019.

Last in the case of **Sylvester Hillu Dawi and Stephen Mwambene Vs DPP, Criminal Appeal No.250 of 2006** where the court stipulated the principle of sharing.

He further submitted that since this event occurred in 2015; the applicants will not interfere with the investigation and no public interest will be jeopardized. The applicants are still innocent until the contrary is proved; as they are ready to meet all conditions which will be stipulated by this court.

In response, Mr. John Mkonyi the State Attorney did not support the application since, this offence is in the interest of the public, he prayed to this court that giving him bail will jeopardy the public interest and also will interfere with the investigation.

In rejoinder, the counsel for the applicant reiterated his submission in chief that this offence is bailable and it is a constitutional right. The issue raised by the respondent has no basis since no reason has been adduced how the public interest will be in jeopardy. He prayed to the court for bail as the applicants will be able to fulfil the conditions stipulated.

Having considered fully the evidence in the affidavits and the submissions of both counsels, *the issue for determination is on whether the applicants should be granted bail or not.*

It is a trite law that Article 13(6) (b) read together with Article 15 of the Constitution of the United Republic of Tanzania, 1977 provide for the presumption of innocence and guarantee to individual's liberty respectively. Accordingly, the applicants still enjoy the presumption of innocence until proven otherwise as was reiterated in the case of **Patel V R [1978] HCD** in which Biron J; held that,

"Whilst awaiting trial is as of right entitled to bail, as there is a presumption of innocence until contrary proved..."

Further, in **Douglas Lyimo V R [1978] TLR** Mwesiumo, J;(as he then was) held ;

"Bail is a right and not a privilege to an accused person."

It is undisputed that the offences with which the applicant is charged are bailable and as such whilst awaiting trial the applicant, as of right, is entitled to bail. It is worthwhile to note that bail is a right and should not be considered as a privilege to an accused person. I am also aware of the conditions set by section 36 of EOCCA which, *inter alia*, requires the accused person to pay cash bonds or to submit to the court the

security whose value is at least half of the value of the property and the rest to be executed by a promissory note.

Hence, the fact that the applicants are charged with carries a subject matter valued at TZS.60,066,382.40/= this total sum should be split into two halves, that is, of TZS 30,033,191.20/= each for the statutory mode of conditions to be executed as stated above. Applying the principle of sharing as demonstrated by the Court of Appeal in the case of **Silvester Hillu Dawi and Stephen Leons Mwambene V The Director of Public Prosecutions, Criminal Appeal No. 250 of 2006 (at Dar es Salaam Registry)** (Unreported), the amount of cash due for each of the applicant is TZS. 15,016,595.5/=.

I hereby grant bail to applicants upon fulfilling the following conditions;

1. Each applicant shall deposit in the trial court a sum of TZS 15,016,595.5/= in cash or the alternative, he shall deposit to the custody of the trial, a title deed of immovable property to the equivalent amount; and the title deed to be deposited shall be accompanied by the valuation report from the government valuer;
2. Each applicant should have two credible and reliable sureties; with fixed abode within the jurisdiction of the trial court;

3. Each of the two sureties shall sign a bail bond equivalent to the respective half of the amount involved in the offence;
4. Each applicant shall immediately surrender his passport or any traveling documents in his name to Resident Magistrate in Charge at Tabora Resident Magistrate's Court; if he does not have any traveling document, he shall tender an affidavit to that effect;
5. Each applicant shall be duty-bound to appear in court on all dates that shall be scheduled by the Court in Economic Crime Case No. 13 of 2021; and
6. Bail conditions to be verified/ascertained by the Magistrate at Tabora Resident Magistrates' Court assigned with the case.
7. Consequently, the Resident Magistrate in charge of Tabora Resident Magistrate's Court must ensure that all bail conditions are accordingly met and implemented before and after releasing the applicants on bail as above prescribed.

Order accordingly.



A.A BAHATI

JUDGE

5/3/2021

