

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

Misc. CRIMINAL ECONOMIC APPLICATION No. 79 of 2020

*(Arising from Economic Case No. 17 of 2020 of the Resident Magistrates'
Court of Bukoba at Bukoba)*

SAIDI BAKARI & GERVASE ALFRED ----- APPLICANTS

Versus

THE REPUBLIC ----- RESPONDENT

RULING

06.04.2021 & 09.04.2021

Mtulya, J.:

Mr. Saidi Bakari & Mr. Gervase Alfred (the Applicants) are jointly and together prosecuted for economic offences of unlawful possession of the Government Trophies contrary to section 86 (1) & (2) (c) (iii) of the **Wildlife Conservation Act** [Cap. 283 R. E. 2002] as amended in 2016 (the Wildlife Act) read together with section 57 (1), 60 (2) & paragraph 14 of the First Schedule to the **Economic and Organised Crimes Control Act** [Cap. 200 R.E. 2019] (the Act).

The Applicants are alleged to have been found with forty six (46) pieces of Elephant Molars teeth valued Tanzanian Shillings Sixty Eight Million Six Hundred Seventy Thousand Only (68, 670,000/=) without a valid permit from the Director of Wildlife. The event alleged to have occurred on 25th January 2020 at Runazi area within Muleba District of Kagera Region. The Applicants were arraigned

before the **Resident Magistrates' Court of Bukoba at Bukoba** (the Resident Magistrate's Court) to reply the charges against them in **Economic Crimes Case No. 17 of 2020** (the Case). The Applicants preferred an application for bail in this court pending their trial in the Resident Magistrates' Court under the authority of law in section 29 (4) (d) of the Act, as the value of money involved in the offence charged is more than Tanzanian Shillings Ten Million.

Noting of the legal requirements in the provision of section 36 (5) & (6) of the Act and practice of this court in granting bail to accused persons charged with economic crimes cases in subordinates courts of District and Resident Magistrates, the Applicants, as lay persons, had nothing much to submit save for a prayer of bail pending the Case in the Resident Magistrate's Court arguing that they can afford bail conditions.

The Applicants' prayer was not protested by Mr. Grey Uhagile, learned State Attorney, who appeared for the Respondent. However, Mr. Uhagile submitted that this court is required to abide with the law in section 36 of the Act in granting bail against the Applicants. I have had an opportunity to grace the provisions in section 36 of the Act and found out that sub sections (5) & (6) are specifically dealing with bail conditions both in mandatory and discretionary powers of

this court. I have also noted that the section has already received a bundle of precedents both in this court and Court of Appeal (see: **Abdallah A. Msongela & Two Others v. Republic**, Misc. Economic Application No. 14 of 2007; **Edward D. Kambuga & Another v. Republic** [1990] TLR. 84; **Director of Public Prosecution v. Aneth John Makame**, Criminal Appeal No. 127 of 2018; **Mwita Joseph Ikohi & Two Others v. Republic**, Criminal Appeal No. 60 of 2018; **Juma Kambi Kong'wa & Another v. Republic**, Misc. Economic Cause No. 16 of 2017; and **Fausta Gaitan Lumoso & Three Others v. Republic**, Misc. Economic Cause No. 40 of 2017).

I am also aware of the requirement of law in section 36 (5) (a) of the Act as interpreted by the Court of Appeal in the precedent of **Silvester Hillu Dawi & Others v. Director of Public Prosecutions**, Criminal Appeal No. 250 of 2006, which propounded the principle of *sharing* the amount of value of money involved in an offence when determining bail conditions where there is more than one accused person facing the same charge. The principles is now settled and certain in practice of this court (see: **Abeid Mussa and Another v. Republic**, Misc. Criminal Application No. 9 of 2017 (HC-Tanga and **Salum Abeid Mbaya & Ten Others v. Republic**, Consolidate Misc. Economic Applications Nos. 68 & 69 of 2019 (HC-

Bukoba). However, this court is empowered to impose any conditions which may deem it fit or for interest of justice for the Applicants to appear in the Case for mention or hearing or any other order of the court (see: **Edward D. Kambuga & Another v. Republic** (supra)).

Having said so, and considering the conditions under the provisions of section 36 (5) & (6) of the Act, and regarding the precedent in **Salum Abeid Mbaya & Ten Others v. Republic** (supra), and noting the directives in the decision of **Silvester Hillu Dawi and Others v. Director of Public Prosecutions** (supra), and appreciating the Judgment in **Edward D. Kambuga & Another v. Republic** (supra), I have formed an opinion to grant the Applicants bail pending hearing and determination of the Case at the Resident Magistrates' Court. However, the Applicants shall be released upon fulfilling the following listed conditions:

1. Each Applicant to surrender his passport or any other travelling document, if any, to the Regional Crimes Officer, Kagera Region;
2. Each Applicant shall report to the Resident Magistrate In Charge of Bukoba Resident Magistrates' Court at

Bukoba, Kagera Region once in every last Monday of a month and sign a specific register, if need be;

3. Each Applicant shall not travel out of Kagera Region without prior written leave of the Resident Magistrate In-Charge of Bukoba Resident Magistrates' Court at Bukoba, Kagera Region;

4. Each Applicant should have two sureties, and one must be employee of the government, local government, government agency, or any other organization recognized under the law and must be resident of Kagera Region;

5. Each Applicant's sureties should submit letters and certified copies of identity cards from their respective employers;

6. Each Applicant's sureties should produce in court letter of introduction from their respective street or village chairman;

7. Each Applicant must enter appearance in court on every date when the case is scheduled for mention, hearing or any other order or direction of the court;

8. Each Applicant's sureties shall undertake to make sure that his Applicant is available and enter attendance in court whenever required;

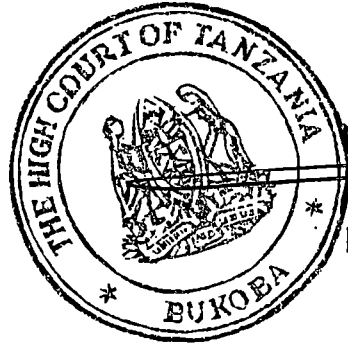
9. Each Applicant shall deposit cash in sum Tanzanian Shillings Thirty Five Million Only (35,000,000/=) or in alternative to deposit immovable property equivalent to Tanzanian Shillings Thirty Five Million Only (35,000,000/=); In case any of the Applicants decides to deposit immovable property, he shall deposit title deed supported by Valuation Report from the Government Valuer; and each of the Applicant's sureties must sign a bond of sum of Tanzanian Shillings Eighteen Million Only (18,000,000/=) as a security for appearance of the respective Applicant in court; and

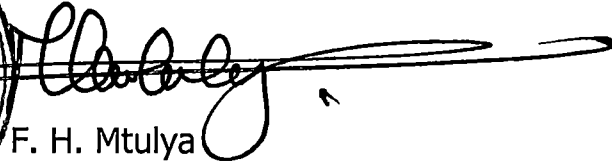
10. The above ordered bail conditions shall be supervised and sureties certified by the Deputy Registrar of this court.

This Application is granted without any order as to the costs.

Each party shall bear its own costs.

It is accordingly ordered.

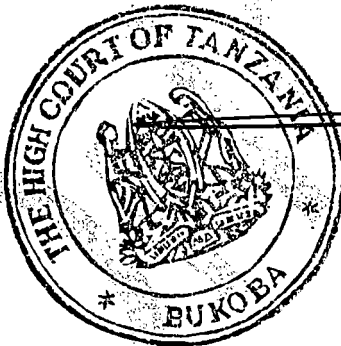



F. H. Mtulya

Judge

09.04.2021

This Ruling was delivered in Chambers under the seal of this court in the presence of the learned State Attorney, Mr. Joseph Mwakasege and in the presence of the Applicants, Mr. Saidi Bakari and Mr. Gervase Alfred.




F. H. Mtulya

Judge

09.04.2021