

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

**MISC. CRIMINAL APPLICATION NO. 22 OF 2021**

*(C/F Economic Case No. 23 of 2021 in the Resident Magistrate's Court of  
Arusha at Arusha)*

**MARIA ANYIMIKE MWAKABAGE.....1<sup>ST</sup> APPLICANT**  
**ZIPPORAH GEORGE NGADADA.....2<sup>ND</sup> APPLICANT**  
**RUTH AUGUSTINO DEDU.....3<sup>RD</sup> APPLICANT**  
**FLORENCIA CHARLES NYAMBARI.....4<sup>TH</sup> APPLICANT**  
**MICHAEL MATHIAS.....5<sup>TH</sup> APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**RULING**

**27/04/2021 & 30/04/2021**

**GWAE, J**

In the Resident Magistrate's Court of Arusha at Arusha, the applicants named above stand charged with economic offences in four (4) counts, namely; **1<sup>st</sup> count** for all accused persons now applicants, is for an offence termed "organized crime" c/s paragraph 4 (1) of the First Schedule and section 57 and 60 (2) of the Economic and Organized Crime Control Act, Cap 200, Revised Edition, 2019 (Hereinafter to be referred to as "the Act").

In the same way, in the **2<sup>nd</sup> count** against the 1<sup>st</sup> and 2<sup>nd</sup> applicant herein above for an offence of stealing by Person in Public service c/s 258 and 270 of the Penal Code Cap 16 Revised Edition, 2019, the properties allegedly stolen valued at Tshs. 387,164, 413/=. The 1<sup>st</sup> and 2<sup>nd</sup> applicant also stand charged the offence of occasioning loss to a specified authority c/s 10 (1) of the 1<sup>st</sup> schedule to and section 57 (1) and 60 of the Act. The items involved are the same as those listed in the 2<sup>nd</sup> count with the same value in the **3<sup>rd</sup> count** for.

In the **4<sup>th</sup> count** designed for the 1<sup>st</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> applicant named herein above, for an offence of use of documents in order to mislead the principal c/s 22 of the Prevention and Combating of Corruption Act (Cap 329 Revised Edition, 2019)

The applicants are before this court seeking an indulgence of the court to grant them bail pending hearing and determination of the charge levelled against them and they have preferred their application under section 29 (4) (d) and section 36 (1) of the Economic and Organized Crimes Control Cap 200 Revised Edition, 2019 and section 148 (3) of the Criminal Procedure Act, Cap 20 R. E, 2019 (CPA) and any other enabling provisions of the law.

This application is chamber summons accompanied by the applicants' joint affidavit which is to the effect that; firstly, the offences with which the applicants stand charged before the Resident Magistrate of Arusha at Arusha are

bailable and ~~s~~secondly, that, they have families depending on their care, that the applicants have not been convicted by any court of law of any offence and in a different way, the 1<sup>st</sup> and 2<sup>nd</sup> deponed that they suffering from various diseases requiring special medical attention because of their dotage. The respondent did not file her counter affidavit.

During hearing of this bail application before me, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicant were duly represented by the learned advocates namely,, Mr. Aggrey Kamazima (for the 2<sup>nd</sup> applicant), Mr. John Masangwa (3<sup>rd</sup> applicant), Mr. Kapilipiti Mgalula assisted by Mr. Issa Mavura (for the 1<sup>st</sup> 4<sup>th</sup> applicant and Mr. Robert Rogati, for the 5<sup>th</sup> applicant whereas Ms. Janeth Sekule, the learned Senior State Attorney represented the Republic. Ms. Sekule when addressing the court, she focusedly orally argued that the applicants be granted bail in terms of section 36 of the Act.

Grant or refusal of sought bail by the court to accused persons charged with economic or corruption offences is restrictive as per provisions of section 36 (4) (a)-(f) of the Act which are extensively reproduced herein under;

“The Court shall not admit any person to bail if-

(a) it appears to it that the accused person has previously been sentenced to imprisonment for a term exceeding three years;

(b) it appears to it that the accused person has previously been granted bail by a court and failed to comply with the conditions of the bail or absconded;

(c) the accused person is charged with an economic offence alleged to have been committed while he was released on bail by a court of law;

(d) it appears to the court that it is necessary that the accused person be kept in custody for his own protection or safety;

(e) if the offence for which the person is charged involves property whose value exceeds **ten million** shillings, **unless** that person **pays cash deposit equivalent to half the value of the property, and the rest is secured by execution of a bond;** (emphasis mine)

(f) if he is charged with an offence under the Drugs and prevention of illicit Traffic in drugs Act.

~~In the present application, nothing has been asserted by the representative~~ of the Republic as to constitute impeding of the court's grant of the bail in favour of all accused persons now applicants. Hence the court has **no** justifiable ground in law and facts to refuse this application.

I have also considered that, some of the applicants (3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused) are charged with offence with no indication of monetary value involved in their respective counts. Therefore, their bail conditions do not follow under bail category stipulated under section 36 (4) (e) of the Act as opposed to the 1<sup>st</sup> and 2<sup>nd</sup> applicant who stand charged with the offences involving properties whose value exceeds ten million that is in the 2<sup>nd</sup> and 3<sup>rd</sup> count. Nevertheless, the

properties involving in the 2<sup>nd</sup> and 3<sup>rd</sup> count are the same denoting, in my formed opinion, that, the indicated value should not be doubled jeopardizing the 1<sup>st</sup> and 2<sup>nd</sup> applicant.

More so, since the 2<sup>nd</sup> and 3<sup>rd</sup> count involve two applicants namely; 1<sup>st</sup> and 2<sup>nd</sup> applicant, they have therefore to share the burden stipulated by section 36 (4) (e) under the principle of sharing as correctly emphasized by the Court of Appeal in **Silvester Hillu Dawi and another v. DPP**, Criminal Appeal No. 250 of 2006 (unreported)


By virtue of section 36 (5) of the Act and my reasons herein above, the applicants are therefore granted bail. And the following are bail conditions requiring each applicant to comply with in order to be released on bail pending hearing and final determination of the charge against them unless discharged under section 91 (1) of the Criminal Procedure Act, Cap 20 Revised Edition, 2019:

1. That, 1<sup>st</sup> and 2<sup>nd</sup> applicant shall deposit cash Tshs. **96, 791,103.25** each or deposit a title deed if the title deed is not available of an immovable property or alternatively immovable property such other evidence establishing ownership and value of the same worth not less than Tshs. **96, 791, 103. 25** each applicant
2. That, 1<sup>st</sup> and 2<sup>nd</sup> applicant shall also sign a bond of Tshs. **96,791,103.25 @**
3. That, 1<sup>st</sup> and 2<sup>nd</sup> applicant shall have two sureties who shall sign a bond of Tshs. **48, 395,551.63** with introduction letters from the area

of their or localities or from their employer and Passport or National Identity or voter's card @,

4. That, 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> applicant shall have one reliable surety who must have either Passport or National Identity or Driving Licence or Voter's Card and the sureties' particulars must be clearly recorded
5. That, the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicant shall sign a bond of Tshs. **8, 000, 000/= @ (Say eight million)**
6. That, each surety for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicant shall sign a bond of Tshs. 4,000,000/= (Four million shillings)
7. That, all applicant's movements are curtailed to the extent that, they shall not move out of the jurisdiction of this country without a prior leave of the court.
8. That, each applicant shall be entering appearances whenever ordered so, be it before the subordinate court or this court, Economic and Corruption Division as the case may be.
9. That, each applicant shall not commit any offence attracting custodial sentence during grant of the bail,
10. That, bail conditions shall be approved by the Deputy Registrar of the court in corroboration with any state attorney present

It is so ordered,

  
**M. R. GWAE,**  
**JUDGE.**  
**30/04/2021**

**Court:** Right of appeal to the Court of Appeal as far as bail conditions are concern fully explained



  
**M. R. GWAE,**  
**JUDGE.**  
**30/04/2021**