

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

CONDOLIDATED MISC. CRIMINAL ECONOMIC APPLICATIONS

Nos. 2, 3, & 7 of 2020

*(Arising from Economic Crime Case No. 14 of 2021 of the Resident Magistrates' Court
of Bukoba at Bukoba)*

- 1. VITUS YAMOLA**
- 2. MICHAEL DANIEL NYAMBORA**
- 3. MTEMI AMOS RUKIKO**
- 4. GERALD JACKSON MPELEMBWA**
- 5. DALTON HUMPHREY**
- 6. JUMANNE HAMAD CHIPULA**
- 7. BRIGHTON KUNDI**
- 8. KARIM MUSTAPHA SENG**
- 9. OMBENI ZAKAYO**
- 10. JAPHALY JOSEPH PROTAZ**
- 11. YASIR AZMI**

-----APPLICANTS

Versus

THE REPUBLIC

-----RESPONDENT

RULING

09.04.2021 & 12.04.2021

Mtulya, J.:

Mr. Vitus Yamola and ten other persons (the Applicants) are jointly and together prosecuted for economic offences of occasioning loss to specified authority, Nakuroi Investment Company Limited and leading to organized crimes contrary to sections 57 (1) & 60 (2) and

paragraphs 4 (1) & 10 (1) 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 committed the offences in different locations of Kagera Region on diverse dates between October 2017 and December 2020. The Charge Sheet registered in the **Resident Magistrates' Court of Bukoba at Bukoba** (the Resident Magistrates' Court) in **Economic Crimes Case No. 14 of 2020** (the Case) does not display the value of money involved in the first offence of leading to organized crime whereas the second offence of occasioning loss to specified authority shows **Tanzanian Shilling Two Billion One Hundred Fifty Nine Million Five Hundred Thousand Seventy Six Thousand and Five Hundred Only** (2,159,576, 500/=).

The Applicants preferred an application for bail in this court pending Inquiry and Committal Proceedings in the Resident Magistrates' Court. The Application was made under the authority of the law in section 29 (4) (d) & 36 (1) of the Act and section 392A (1) & (2) of the **Criminal Procedure Act** [Cap. 20 R.E 2019] (the CPA). Noting admission to bail to accused persons in cases like the present one 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 decided to hire the legal services of five learned counsels to soften conditions in the interpretation of proviso in section 36 (5) (a) of the Act. The five learned counsels, viz: Ali K. Chamani, Projestus Prosper Mulokozi, Ibrahim Mswadick, Mashauri Miyasi and Fahad Rwamayanga, joined their efforts and submitted that bail is a constitutional right and accused persons are presumed innocent until when proved guilty of the charged offences in a fair trial. To their opinions, the Applicants may be ordered lenient bail conditions under presumption of innocence to afford them with freedom of movement and right to work to build this nation while awaiting their fate in the Case.

To substantiate their views, the learned counsels cited the following authorities, viz: first, the words in the proviso of section 36 (5) (a) of the Act that: *if the title deed is not available such other evidence as is satisfactory to the court in proof of existence of the property*, and argued that a letter from village or street chairman can suffice as evidence of satisfactory to the court in proof of the existence of properties.

Secondly, freedom of movement, right to work and presumption of innocence are guaranteed in the **Constitution of the**

United Republic of Tanzania [Cap. 2 R.E, 2002] (the Constitution) and precedent in **Freeman Aikael Mbowe & Another v. Republic**, Criminal Appeal, No. 344 of 2018 hence bail conditions should not be imposed as to deny or curtail freedom and liberty of accused persons. Thirdly, the accusation on amount of money involved in the offences being Tanzanian Shillings Two Billion One Hundred Fifty Nine Million Five Hundred Thousand Seventy Six Thousand and Five Hundred Only (2,159,576, 500/=) is not substantiated by any evidence and was stated in the Charge Sheet to restrict rights and freedoms of the Applicants. To justify their statement, the learned counsels cited the authority in the precedent of **Said Shabel v. Republic** [1976] LRT 4.

Finally, the learned counsels submitted that conditions enacted in section 36 (5) (a)-(d) of the Act are not mandatory as the word *shall* in the section is permissive and flexible as per precedent set in the case of **Director of Public Prosecutions v. Freeman Aikael Mbowe & Another v. Republic**, Criminal Appeal, No. 420 of 2018. The submissions registered by learned counsels were well received by Mr. Grey Uhagile, learned State Attorney, who appeared on behalf the Respondent. Mr. Uhagile in his reply to the submissions registered by the learned counsels, did not protest the

Application, but submitted that this court cannot grant lenient bail conditions as the conditions are regulated by the Act in section 36 (5) & (6) of the Act. According to Mr. Uhagile, the provisions in section 36 (5) (a)–(d) are enacted in mandatory terms and this court cannot be flexible, and that the flexibility stated by learned counsels may be interpreted from the provisions in section 36 (6) (a)–(c) of the Act. To Mr. Uhagile, the conditions in section 36 (5) (a)–(c) of the Act were enacted to protect public interest, especially to cater for cases like the present one, where some of the accused persons are foreigners and the amount of money involved in the offences is more than Tanzanian Shillings Two Billion.

I have gone through the submissions registered by the learned minds of both parties in this Application. I think, in my opinion, both parties are in agreement that bail conditions are regulated under section 36 (5) & (6) of the Act. Therefore, the dispute which this court is asked to reply is: *whether the conditions set in section 36 (5) (a)–(d) of the Act are mandatory or may be adjusted to suit submissions of the learned counsels for the Applicants.* On my part, at the outset, I have to thank both parties in noting the provision of section 36 (5) & (6) of the Act and their fine-tuned submissions. However, this court decides matters judiciously with assistance from

learned counsels and precedents so far registered in our courts of record. It is unfortunate in the present Application, the learned minds of both parties have declined to assist this court with precedents interpreting their submissions. I understand this is a court of record and may set any precedent, as it thinks right to do so for interest of justice. Nevertheless, when there are precedents already registered on the subject, and for the sake of certainty of decisions of this court, the court will not depart from its previous interpretation of section 36 (5) & (6) of the Act.

During my perusal and visitation in applications like the present one, I found a bundle of precedents recorded in this court and our superior court in judicial hierarchy (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). As there are precedents on the

provision of section 36 (5) & (6) of the Act, this court cannot be busy interpreting the same text in the present Application.

I understand the proviso in section 36 (5) (a) of the Act is *pari materia* to section 148 (5) (e) of the CPA and may invite similar interpretation. However, the Act is specific legislation which regulates special issues in economic matters. In any case, the dispute with regard to the interpretation of the proviso in the two pieces of legislation, has already been invited for interpretation in the judgment of this court in **Director of Public Prosecutions v. Dennis & Eleven Others**, Criminal Appeal Case No. 87 of 2019. In the judgment, this court stated that the law in the Act was enacted to curb the existing mischief in management of public properties, public interests, national economy and high rate of economic offences. The court then, at page 24 of the decision, stated that:

...the interpretation employed in miscellaneous criminal economic applications for bail with regard to deposition of title deed supported by valuation report from the Government Valuer may not be invited and applied in the present appeal. In economic cases, the remedies are obvious, viz: to protect natural resources, public interests, public properties and national economy. This

*is vivid from the precedent of **Prof. Dr. Costa Ricky Mahalu & Another v. The Hon. Attorney General** (supra) when stating on strictness of bail conditions.*

I have also navigated and scanned the decision in **Prof. Dr. Costa Ricky Mahalu & Another v. The Hon. Attorney General**, Miscellaneous Civil Cause No. 35 of 2007 and found out that, at page 30 of the decision, the court drafted the following text:

*It is generally accepted that once an offence is bailable, the applicable principle requires that the conditions must be reasonable...**However, when it comes to the application of the Act [the Economic Crimes Act] ...** Once charged, **a person who does not have the requisite amount will have no option but to be deprived of his liberty** not because the offence is not bailable but because he cannot meet the condition of depositing the requisite amount of money...*

(Emphasis supplied).

The court reasoned at page 33 of the Ruling in the following words:

*It is indisputable fact that the Act [the Economic Crimes Act] was enacted **for purpose of control and eradication of economic crimes with a view of protecting public property and national economy as a whole.** It is important legislation in view of challenges facing our growing economy...*

(Emphasis supplied).

This reasoning of the court is in line with the purpose behind enactment of the provisions in section 36 (5) & (6) of the Act and has been followed by several precedents of this court (see: **Salum Abeid Mbaya & Ten Others v. Republic**, Consolidate Misc. Economic Applications Nos. 68 & 69 of 2019 (HC- Bukoba); **Said Bakari & Another v. Republic**, Misc. Criminal Economic Application No. 79 of 2020 (HC-Bukoba; **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). It has been practice of this court that once precedents are registered, no any interpolations may be invited, unless there are good reasons to do so. I do not think in the present Application there are compelling reasons to adjust the established practice of this court. It

is the thinking of this court that the reasoning in the precedent of **Salum Abeid Mbaya & Ten Others v. Republic** (supra), still has merit today and the question asked and replied at page 14 in the Ruling is quietly relevant in the present Application. For clarity purposes, the question may be displayed in this Application:

*...which other property than title of a registered land can secure availability of an accused person in court?
To my opinion, I am of the considered view that the deposition of tittle deed, in one of the requirements of bail conditions, in economic cases is more reliable than any other property.*

I also understand that learned counsels for the Applicants have complained that the figure above Tanzanian Shillings Two Billions was drafted in the Charge Sheet to restrict bail to the Applicants. However, I am wondering that arguments to be registered in this Application, although I am aware that the Republic cannot draft the figures as it wishes or enjoys more rights than other parties in criminal disputes registered in this court (see: **Joseph Stephen Gwaza v. Attorney General & Director of Public Prosecution**, Miscellaneous Civil Cause No. 27 of 2018; and **Director of Public**

Prosecution (Zanzibar) v. Farid Hadi Ahmed & Nine Others, Criminal Appeal No. 96 of 2013). The powers to draft the amount of money involved in an economic offences is fettered with evidences, but this is not an appropriate forum to determine the dispute.

There is again citation of the precedent in **Freeman Aikael Mbowe & Another v. Republic**, Criminal Appeal, No. 344 of 2018. To my understanding, the decision sets general principles regulating bail conditions and briefly states that:

...if the offence is bailable, consideration of presumption of innocence, cancellation of bail with reasons, consideration of gravity of offence, conditions to avoid implied denial of bail, conditions to avoid double jeopardy, reasons for denial must be reasonable, consideration of congestion in remand or prison and consideration of freedom and liberty of individuals.

That is all in this precedent. However, in my considered opinion, bail conditions in normal criminal cases, cannot be invited in miscellaneous criminal economic applications. I have already stated in this Ruling that bail conditions in economic crime cases are strict and

court may impose any conditions which it thinks fit for purposes of protection of public interests, properties and economy of the nation (see: **Edward D. Kambuga & Another** (supra); **The Director of Public Prosecutions v. Aneth John Makame** (supra) and **Salum Abeid Mbaya & Ten Others v. Republic** (supra).

This court is also bound by the interpretation of section 36 (5) (a) of the Act enumerated by the Court of Appeal in the precedent of **Silvester Hillu Dawi and 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 charges*. The principles is now settled and certain in practice of this court (see: **Abeid Mussa & Another v. Republic**, Misc. Criminal Application No. 9 of 2017 (HC-Tanga); **Salum Abeid Mbaya & Ten Others v. Republic**, Consolidate Misc. Economic Applications Nos. 68 & 69 of 2019 (HC-Bukoba); and **Said Bakari & Another v. Republic**, Misc. Criminal Economic Application No. 79 of 2020 (HC-Bukoba).

However, as I stated earlier in this Ruling, 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. Having

said so, and considering the conditions under the provisions of section 36 (5) (a)–(d) & (6) (a)–(c) of the Act, and regarding the precedent in **Salum Abeid Mbaya & Ten Others v. Republic** (supra), and noting the directives from our superior court 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 Inquiry and Committal proceedings 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 the Resident Magistrate' Court in their respective regions of residence once in every last Monday of a month and sign a specific register, if need be, viz: Dar Es Salaam for the First, Third, Seventh and Eighth Applicants; Arusha for the Second, and Ninth Applicants; Mbeya for the Fourth Applicant; Kagera for the Fifth and Tenth Applicants; and Dodoma for the Eleventh Applicant;

3. Each Applicant shall not travel out of his respective Region of residence without prior written leave of the Resident Magistrate In-Charge of the Magistrates' Court of the 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 within the United Republic of Tanzania;
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 One Hundred Million Only (100,000,000/=) or in alternative to

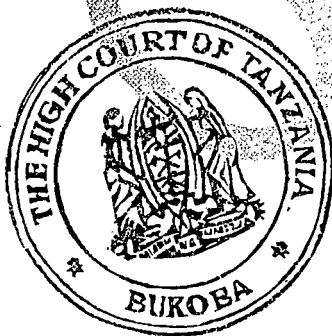
deposit immovable property equivalent to Tanzanian Shillings One Hundred Million Only (100,000,000/=); In case any of the Applicants decides to deposit immovable property, he shall deposit title deed supported by Valuation Report from the Government Valuer;

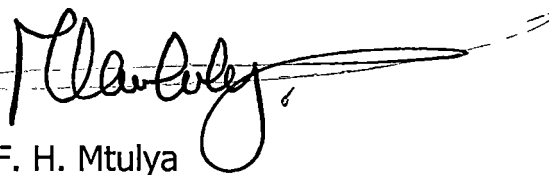
10. Each of the Applicant's sureties must sign a bond of sum of Tanzanian Shillings Fifty Million Only (50,000,000/=) as a security for appearance of the respective Applicant in court; and

11. 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.

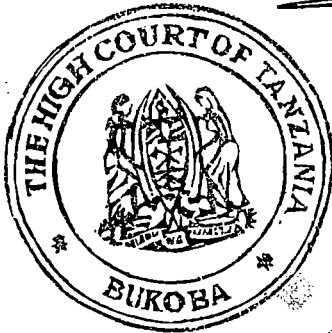



F. H. Mtulya

Judge

12.04.2021

This Ruling was delivered in Chambers under the seal of this court in the presence of the learned State Attorney, Mr. Grey Uhagile and in the presence of all Applicants, and their learned legal counsels, Projestus Prosper Mulokozi, Mashauri Miyasi, Ibrahim Mswadick, and Fahad Rwamayanga.




F. H. Mtulya

Judge

12.04.2021