

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

**MISC. CRIMINAL APPLICATION NO. 13 OF 2021**

**(C/F Economic Case No. 01 of 2019, The Resident Magistrate Court of Arusha at Arusha)**

**EMMANUEL S/O JUSTINE @ MBANDO.....1<sup>ST</sup> APPLICANT**

**FREDRICK S/O MMARI.....2<sup>ND</sup> APPLICANT**

**HASSAN S/O SAID @ ZIDI.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**THE D.P. P.....RESPONDENT**

**RULING**

**05/04/2021 & 02/06/2021**

**GWAE, J**

The applicants named above have brought this application for bail under the provisions of section 149 of the Criminal Procedure Act Cap 20 R.E 2002, section 29 (4) (d) and 36 (1) of the Economic and Organized Crime Control Act Cap 200 R.E. 2002 read together with section 10 of the written laws (Misc. Amendments) Act No. 03 of 2016 for the orders that this Court be pleased to grant and release the applicants on bail pending trial of Economic Case No 01 of 2019 in the Resident Magistrates Court of Arusha.

The application is supported by joint affidavit of the applicants which is to the effect that; the offence to which the applicants stand charged is a bailable offence, that, they have reliable sureties who are ready to execute the bail bond and also their release on bail shall not in any way prejudice the interest of the Republic. The respondent, on the other hand, being represented by the learned State Attorney, **Mr. Ahmed Hatibu** who did not oppose the application save for bail conditions to be imposed as per section 36 (5) of the Economic and Organized Crimes Control Act (Cap 200 R.E 2002).

Before the Resident Magistrate's Court of Arusha the applicants stand charged of one offence of unlawful possession of Government trophy contrary to sections 86 (1) & (2) (b) of the Wildlife Conservation Act, No.5 of 2009 read together with paragraph 14 of the 1<sup>st</sup> schedule to, and sections 57 (1) & 60 (2) both of the Economic and Organized Crimes Control Act (Cap 200 R.E 2002) as amended by sections 16 (a) and 13 (b) respectively of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

According to the charge duly filed on the 31<sup>st</sup> December 2018, it is alleged that, on the 29<sup>th</sup> November 2018 at Maji ya chai Kwa Aloyce the applicants were jointly and together found in unlawful possession of Government trophies to wit; **two (2)** pieces of elephant tusks equivalent to two killed elephants weighing 3.2

kilograms each valued at USD 30,000 which is equivalent to Tanzanian Shillings Sixty-Nine Million Two Hundred Eighty-Five thousand **(Tshs. 69,285,000/=)**.

Admittedly, an application for bail in the charge against which the applicants are charged with could not be entertained by the Resident Magistrates Court as the value of the subject matter involved has exceeded Tshs. 10,000,000/= as per Section 29 (4) (d) of the Economic and Organized Crimes Control Act. This court being a competent court for determination of this application, and taking into consideration the joint affidavit of the applicants and the fact that the respondent did not contest the application, I therefore find no justifiable reason to decline granting this application.

Similarly, it has been a well cherished principle of the law that a person is presumed innocent until proved guilty as it was held in the case of **Patel vs. the Republic** [1978] HCD in which **Biron J;** (as he then was) held inter alia that: -

"Man, whilst awaiting trial is as of right entitled to bail, as there is a presumption of innocence until the contrary is proved. I would say that the court should be guided by four main principles on the granting of bail pending trial. The first and foremost is that the court should ask itself whether the accused would be available at the trial. Secondly, whether the accused is likely to commit further offence if he is allowed out on bail in which case his character is certainly not irrelevant. Thirdly, whether the

accused is likely to interfere with the investigation by influencing witnesses or otherwise, and fourthly, the gravity of the accusation and the severity of the punishment if conviction results"


Guided by the above principle of law, this court is therefore bound to grant the sought bail on the following conditions pursuant to section 36 (5) of the Economic and Organized Crimes Control Act;

1. Each applicant shall deposit hard cash Tshs. **11,447, 500/=** or Other immovable property with title deed alternatively, with ~~estimated value not below Tshs. **11,447, 500/=**.~~
2. Each applicant to have two sureties with introductory letters from the area of locality or from their employer(s).
3. Each surety shall sign a bail bond of Tshs. **11,447, 500/=**.
4. Each surety must have either Passport or National Identity or Driving License or Voter's Card and the sureties' particulars must be clearly recorded.
5. During pendency of the case, the applicants are prohibited to leave the country without a prior leave of the Court.
6. That, the applicants are to ensure that they do not commit any offence attracting a custodian sentence while on bail, in the event

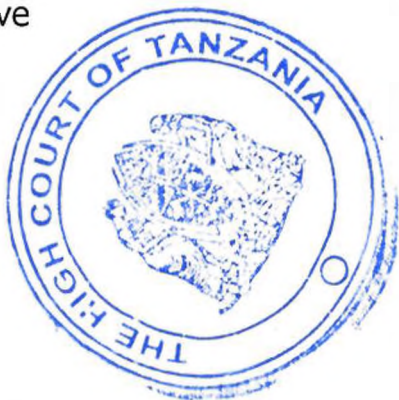
they commit any offence they shall show cause why their bail should not be cancelled.


7. Bail conditions set forth shall ascertained by the Deputy Registrar of the Court together with a State Attorney present.

It is so ordered,

  
**M.R. Gwae,**  
**Judge.**  
**02/06/2021**

**Court:** Right of appeal explained in respect of the bail conditions set out herein above



  
**M.R. Gwae,**  
**Judge.**  
**02/06/2021**