

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

MISCL. CRIMINAL APPLICATION NO. 32 OF 2021

- 1. ROBERT ANTONY @ BONGE 1ST APPLICANT**
2. KEFA IPARAPARA @ YEYEYE JACOB 2ND APPLICANT
3. MSAFIRI ANTONY 3RD APPLICANT
4. MABULA MANYANGU @ SAGUDA 4TH APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

*(Application for bail pending trial from the District Court of Bunda at
Bunda in Economic Case No. 2 of 2021)*

RULING

9th and 10th June, 2021

KISANYA, J.:

The above named applicants have been arraigned at the District Court of Bunda for one count of unlawfully possession of Government Trophies contrary to section 86(1) and (2)(b) of the Wildlife Conservation Act, 2009 read together with paragraph 14 of the 1st Schedule to and section 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap. 200, R.E. 2019] (the EOCCA). The particulars of offence are to the effect that, on 11th January, 2021, at Kabasa Village within Bunda District, the applicants were found in unlawful possession of Government trophies to wit, one lion skin valued at Tanzania shillings **11,363,100**, the property of the United Republic of Tanzania without a permit from the Director of Wildlife.

In terms of section 29(4) of the EOCCA, this Court is vested with powers to determine bail application where the actual money or value of property involved in the economic case is more than ten million shillings. In that regard, the applicants were compelled to file this application. They have moved the Court to admit them on bail pending trial. The application is supported by a joint affidavit sworn by the applicants. The respondent did not file an affidavit in reply to contest the application.

At the hearing, Mr. Daud Mahemba, learned advocate appeared for the applicants whereas the respondent had the services of Mr. Nimrod Byamungu, learned State Attorney.

In addressing the application, Mr. Mahemba adopted the affidavit in support of the application and implored me to grant the application and admit the applicants on bail pending trial. Mr. Byamungu did not object the application. He just asked the Court to impose bail conditions which will ensure availability of the applicants during trial. The learned counsel for the applicants rejoining by urging the Court to impose bail conditions in accordance with the law.

I have dispassionately considered the application and submissions by the learned counsel for the parties. It is common ground that the value of trophies involved in the offence preferred against the applicants exceeds ten millions. Therefore, pursuant to section 29(4) (d) of the EOCCA, the power "to hear bail application and grant bail" is vested in this Court. This being discretionary power, it must be exercised judiciously. Apart from availability of the accused to stand the trial, the court considering bail application is entitled to take into account all the circumstances pertaining to the case

before exercising its discretion. See the case of **Onasaa Shererengwa Mushi vs R** (1984) TLR 170 where similar stance was stated. Other factors include may include, gravity of the offence and severity of the offence, security of the accused, protection of victim, preservation of public order to mention but a few.

In the present case, the applicants are readily offering reliable sureties who will ensure their availability during trial. They also undertake to comply with bail conditions to be imposed by the Court. The respondent did not tell the Court, among others, whether there is possibility that the appellants might abscond, interfere with the investigation or commit other crime. Having considered further that bail is a constitutional right, I am of the considered view that this is a fit case to grant bail.

In relation to bail conditions, guidance is provided for in section 36 of the EOCCA. The said provisions require the applicants, among others, to pay cash or deposit to court, the security whose value is at least half of the value of the property and the rest executed by promissory bond. It is trite law that where more than one accused is charged in one case, half of amount requires for bail purposes should be shared equally among the accused. See the case of **Silvester Hillu Dawi & Stephen Leons Mwambene vs The Director of Public Prosecutions**, Criminal Appeal No. 250 of 2006, CAT at DSM (Unreported).

Therefore, guided by the above position of law, I grant the application and admit the applicants on bail pending trial on the following conditions:

1. Each applicant shall not travel outside Mara Region without prior approval of the Resident Magistrate Court of Bunda at Bunda.

2. Since the pending case involves five accused, each applicant shall deposit a sum of TZS. 1,136,310/= or deposit to the custody of the Court, a title deed or evidence satisfactorily to prove existence of an immovable property valued at TZS. 1,136,310/=.
3. Each applicant should have two reliable sureties with fixed abode within Bunda District.
4. Each surety shall execute a bail bond in the sum of TZS. 568,135/=.
5. Each surety shall produce an introductory letter from his or her employer or local authorities and a copy of recognized identity card.
6. The applicants shall surrender their passports or any travelling documents (if any);

The Magistrate assigned with the case at the District Court of Bunda will ascertain compliance with these bail conditions.

It is so ordered.

DATED at MUSOMA this 10th day of June, 2021.




E. S. Kisanya
JUDGE

COURT: Ruling delivered through video link 10th day of June, 2021, in appearance of Mr. Daud Mahemba, learned advocate for the applicants and Mr. Nimrod Byamungu, learned State Attorney for the respondent.


E. S. Kisanya
JUDGE
10/06/2021