

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 77 OF 2021

*(Originating from Economic Case No. 70 of 2020 in the Resident
Magistrates Court of Morogoro Region at Morogoro)*

SILVERIO LAURENT KIGOMBA @ZAWADI.....1ST APPLICANT
EKARIST RAPHAEL MWANUKE.....2ND APPLICANT
RICHARD DAIMON MANGA.....3RD APPLICANT
JULISTO PIUS MBINGALALA4TH APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of Order: 28/06/2021.

Ruling date: 28/06/2021.

E. E. Kakolaki, J

By way of chamber summons brought under certificate of urgency and supported by the applicants' affidavit sworn by advocate **Derick Vicent**, the applicants are seeking for grant of bail. The application has been preferred under Section 29(4)(d) and 36(1) of the Economic and Organised Crime Control Act, [Cap. 200 R.E 2019].

Before the Resident Magistrates Court of Morogoro Region at Morogoro in Economic Crimes Case No. 70 of 2020 the applicants have been indicted together with four others facing charges in different counts. Each of them is charged of the offence of **Unlawful Possession of Government Trophies**; Contrary to section 86(1)(2)(b) and (3) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organised Crime Control Act, [Cap. 200 R.E 2019] herein referred to as EOCCA, in the 2nd, 3rd, 4th and 5th counts respectively. It is alleged by prosecution that each applicant on the 7th October, 2020 at Uleling'ombe Village, within Kilosa District in Morogoro Region, was found in unlawful possession of Government Trophies worth Tanzanian Shillings **USD 15000** equivalent to Tanzanian Shillings **Thirty Four Million Seven Hundred Ninety Five Thousand Eight Hundred** (Tzs. 34,795,800).

Further to that the 1st, 3rd and 4th applicant were booked with the charge of **Unlawful Possession of a Firearm**; Contrary to Section 20(1),(2) of the Firearms and Ammunitions Control Act, No. 2 of 2015 read together with paragraph 31 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organised Crime Control Act, [Cap. 200 R.E 2019], where it is alleged each of them on the 7th October, 2020 at Uleling'ombe Village, within Kilosa District in Morogoro Region, was found in unlawful possession of Firearm, a muzzle leading gun (gobole) without permit licence.

When the matter was called for hearing before me on 28/06/2021, applicants who were not present in court appeared represented by Mr. Beatus Kiwale learned advocate whereas the Republic (Respondent) was represented by

Ms. Janipher Masue learned State Attorney. Submitting in support of the application Mr. Kiwale adapted the applicants' affidavit to form part of his submission and prayed the court to grant the application as the offences with which the applicants are booked with before the subordinate court are bailable and that this court has jurisdiction to grant the application as prayed. Ms. Masue for the respondent from the outset notified the court that the respondent is not contesting the application. She however, prayed the Court when exercising its discretion in fixing bail conditions to impose reasonable conditions that will guarantee applicants' appearance in court when needed. She added, guidance is provided under sections 29 and 36 of the EOCCA.

In determining this application regard has been paid to the applicants' affidavit in support of the application and the submissions by both learned counsels. Both counsels are in agreement that the offences with which the applicants are facing are bailable and that this court has powers to entertain the application and grant them bail. Having considered the fact that the application is not contested by the respondent and the fact that, applicants have reliable sureties ready to guarantee their presence in court when required, and have promise to be ready abide to the court's condition should their bail be granted, I find it just and proper to grant the application as bail is their constitutional right. In fixing bail conditions this court has considered the provisions of section 36(5) and (6) of the EOCCA. The section 36(5) and (6) of EOCCA reads:

(5) Where the Court decides to admit an accused person to bail, it shall impose the following conditions on the bail, namely-

(a) where the offence with which the person is charged involves actual money or property whose value exceeds ten million shillings unless that person deposits cash or other property equivalent to half the amount or value of actual money or property involved and the rest is secured by execution of a bond; Provided that, where the property to be deposited is immovable, it shall be sufficient to deposit the title deed, or if the title deed is not available such other evidence as is satisfactory to the court in proof of existence of the property; save that this provision shall not apply in the case of police bail;

(b) appearance by the accused before the Court on a specified date at a specified time and place;

(c) surrender by the accused to the police of his passport or any other travel document; and

(d) restriction of the movement of the accused to the area of the town, village or other area of his residence.

(6) The Court may, in addition to the mandatory conditions prescribed in subsection (4) impose any one or more of the following conditions, namely-

(a) requiring the accused to report at specified intervals to a police station or other authority in his area of residence;

(b) requiring the accused to abstain from visiting a particular locality or premises, or association with certain specified persons;

(c) any other condition which the Court may deem fit to impose

in addition to the preceding conditions, which appear to the Court to be likely to result in the appearance of the accused for the trial or resumed trial at the time and place required or as may be necessary in the interest of justice or for the prevention of crime.

Applying the provisions of sections 29(4)(d) and 36(5)(a)(b)(c)(d) and (6)(a)(b)(c) of EOCCA, I hereby grant bail to the applicants on the following conditions:

1. Each applicant has to deposit in Court cash half of Tanzania Shillings **Thirty Four Million Seven Hundred Ninety Five Thousand Eight Hundred** (Tzs. 34,795,800) or the property equivalent to half value of the said amount and the rest of the amount be secured by execution of bonds in writing. Principle of sharing does not apply as each applicant was charged with independent count.
2. Each applicant has to provide two reliable sureties who are to execute a bond of Tanzanian Shillings Ten Million (Tshs. 10,000,000/ each, and to satisfy the court that sureties are either employees of the Government or possesses a National Identity Card issued by NIDA with permanent residences within Morogoro Region.
3. The applicants should not leave the jurisdiction of the court without prior permission from the Resident Magistrates Court of Morogoro Region at Morogoro.
4. The applicants are to report to the Regional Crime Officer for Morogoro Region according to the schedule prescribed by him/her.

5. Verification of sureties and bond documents to be executed by the Resident Magistrate, at Resident Magistrates Court of Morogoro Region at Morogoro.
6. The applicants are to surrender their passports and any other travelling documents (if any) to the Resident Magistrate, Resident Magistrates Court of Morogoro Region at Morogoro.

It is so ordered.

DATED at DAR ES SALAAM this 28th day of June, 2021.




E. E. KAKOLAKI

JUDGE

28/06/2021

Ruling delivered today 28th day of June, 2021 in the presence of Mr. Beatus Kiwale advocate for the applicant who is also holding brief for Ms. Janepher Masue, State Attorney for the Respondent and Ms. Monica Msuya, Court clerk, and in the absence of the applicant.




E. E. KAKOLAKI

JUDGE

28/06/2021