

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. CRIMINAL APPLICATION NO. 56 OF 2020

(C/O Mpanda DC Economic Crimes Case No. 13 of 2020)

DARUSHI S/O ZENZE @ LUHANGA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date: 14/07/2021 & 15/07/2021

Nkwabi, J.:

The applicant Darushi S/O Zenze @ Luhanga was arraigned before Mpanda District Court facing two counts in an economic crimes case number 13/2020. The first count is unlawful possession of Government Trophy contrary to section 86(1) and (2) (b) 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 Organized Crime Control, Act



[CAP. 200 R.E. 2002 as amended by section 16(a) and 13(b) respectively of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016.

He was also charged, on the 2nd count, with unlawful dealing in trophies contrary to section 84(1) 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 Organized Crimes Control Act [Cap. 200 R.E. 2002 as amended by section 16(a) and 13(b) respectively of the Written Laws (Miscellaneous Amendment) Act, No. 3 of 2016.

Since the trial court (District Court) had had been conferred jurisdiction by the Prosecution Attorney In-charge through his certificate for trial, the applicant was called upon to plea whereas he pleaded not guilty to the charge. The value of the trophy subject of the charge is over and above the threshold the trial court could entertain the application for bail hence this application before this court.

Ms. Sekela argued, in her submission in chief that given the value of the alleged trophy, it is the High Court that is vested with the requisite

jurisdiction to entertain the application for bail. The offence is bailable and the applicant has his safety not in danger if he is availed bail. He suffers epileptic fits though he treats the condition by traditional medicines. The applicant promises to adhere to bail conditions that will be set by the court and shall have reliable sureties.

The respondent did not file a counter-affidavit indicating that the respondent would not object the application for bail filed by the applicant. That is what happened during the hearing of this application for bail since the learned State Attorney who appeared for the Respondent did not object the application. In her submission, however, she alerted this court to abide with the provisions of section 36(4)(e) of the Economic and Organized Crimes Control Act.

On her side, Ms. Sekela was quick to comment that this court has also to consider section 36(5) (a) of the same Act in assessing bail conditions to the effect that any other property could be used as security instead of deposit of cash.



The submissions were born by the affidavit of the applicant on paragraph 4 where he promised to abide to any condition which will be set by this court and that he suffers epilepsy thus needing intensive family care.

I have had ample time to consider this application for bail. In as much as the Respondent is conceding the application for bail, this court has no any reason warranting refusal to grant bail to the applicant. The premises that are built towards the granting of bail to the applicant are that, the offences that the applicant is facing in Mpanda District Court are bailable, no certificate of the DPP has been filed in court to deny the applicant bail, the applicant has deposed that he suffers from epileptic fits which need the close attention of his family and he promises to abide by the bail conditions that will be set by this court as well as bringing reliable sureties. In the circumstances, I grant bail to the applicant as prayed.

I now revert to the observations made by both counsel in respect of bail conditions which this court would set. While the learned State Attorney alerted this court to abide with the provisions of section 36(4)(e) of the Economic and Organized Crimes Control Act, the counsel for the applicant,



comments that this court has also to consider section 36(5) (a) of the same Act in assessing bail conditions to the effect that any other property could be used as security instead of deposit of cash.

Going by the submissions of both parties, and in accordance with the law, I impose the following bail condition to be fulfilled by the applicant and his sureties in order the applicant is released on bail:

1. The applicant shall be out on bail upon depositing cash money to the tune of Tshs. 35,000,000/= or so equivalent to half of the value of the trophies or deposit title deed of immovable property whose value is proved through government valuer's report to be not less than T.shs 35,000,000/= or so equivalent to half of the value of the trophies.
2. The applicant shall have two reliable sureties who shall execute bail bond at T.shs 35,000,000/= each shall bear T. shs 17,500,000/= or so equivalent to half of the value of the trophies. Each surety shall have introductory letter from local government leader(s) of their locality where they reside.



3. Since the applicant ought to appear in the trial court, such appearance on the fixed date shall be deemed as reporting to the authority.
4. The applicant has to surrender any travel document that he possesses if any.
5. The applicant shall not travel outside the jurisdiction of the High Court Sumbawanga Zone during the pendency of Economic crimes case the subject of this application for bail, save with the permission of the learned trial Magistrate.
6. Ascertainment of compliance with the bail conditions set hereinabove shall be conducted by the Resident Magistrate in-charge of the Resident Magistrates' Court Katavi.

It is so ordered.

Dated at Sumbawanga this 15th day of July, 2021.




J. F. Nkwabi,
Judge

Court: Ruling delivered in chambers this 15th day of July 2021 in the presence of Ms. Sekela Amulike, learned counsel for the applicant and the applicant present in person as well as in the presence of Mr. John Kabengula, learned State Attorney for the respondent (the Republic).




J.F. Nkwabi,
Judge