

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. CRIMINAL APPLICATION NO. 7 OF 2021

MASANJA MAZIKU@BUGOLOLE@MWANAMBEPE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

[Arising from the District Court of Kahama at Kahama

In Economic Crime Case No. 06/2020]
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RULING

8th&14th June,2021.

MDEMU, J.:

This is an application for bail pending trial of the Applicant in Economic Case No.6 of 2020 in the District Court of Kahama. According to the holding charge, the Applicant is charged with three counts to wit: unlawful possession of firearms contrary to the provisions of section 20(1) (a) of the Firearms and Ammunitions Control Act No. 2 of 2015 read together with Paragraph 31 of the 1st Schedule to and sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap.200 R.E 2019 in the 1st count. With regard to the 2nd count, the Applicant is

charged with unlawful possession of firearm parts contrary to the provisions of section 20 (1) (a) of the Firearms and Ammunitions Control Act No. 2 of 2015 read together with Paragraph 31 of the 1st schedule to and sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap.200 R.E 2019. In respect of the third count, the Applicant is charged with unlawful possession of ammunitions contrary to the provisions of section 20(1) (a) of the Firearms and Ammunitions Control Act No. 2 of 2015 read together with Paragraph 31 of the 1st schedule to and sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap.200 R.E 2019.

It is alleged all counts that, in the night of 17th day of December, 2020, in Gula village within Kahama District, the Applicant was found in possession of firearms, firearm parts and ammunitions without license. To date, the Applicant has neither been committed to the Corruption and Economic Crimes Division of the High Court for trial nor the Director of Public Prosecutions issued consent and certificate of transfer to confer jurisdiction to the District Court of Kahama, hence the instant application for bail.

This application is brought under the provisions of section 29(4) and 36(1) of the Economic and Organized Crime Control Act. It is supported

by the affidavit of the Applicant sworn on 22th of February, 2021. On 8th of June, 2021 this application came for hearing. The Applicant appeared in person whereas Ms. Salome Mbughuni, learned Senior State Attorney appeared for the Respondent Republic.

Submitting in support of the application, the Applicant in a nut shell stated that, bail is his right and prayed his affidavit be adopted to form part of his submissions.

On her part, Ms. Mbughuni started by supporting the application in the first place. She went on submitting that, the charge the Applicant is held with does not state the value and that, section 29(4) of the Economic and Organized Crime Control Act is silent on which Court has jurisdiction to determine bail when the value is not disclosed. On that situation, she prayed this Court to use its inherent powers under Article 108(2) of the Constitution of the United Republic of Tanzania, 1977 and grant bail to the Applicant. Ms. Mbughuni went on insisting that, in the case of **Suleiman Masoud Suleiman and Another v. Republic, Criminal Application No. 10 of 2020** (unreported), this Court granted bail where the value is not stated in the holding charge. She finally concluded that, this court has thus jurisdiction to determine bail of the Applicant. She lastly, reiterated her earlier position that, they don't oppose this application, only that the

Applicant should comply with bail conditions. That was the end of both parties' submissions.

I have gone through both parties' submissions plus the cited authority together with the available records. The crucial question for determination is whether this court can determine bail of the Applicant under section 29(4) of Cap.200 where the charge does not disclose the value of the property involved.

It is undisputed fact that, the applicant's holding charge does not state value in all three counts and that, it is not in dispute again that section 29(4) of the Economic and Organized Crime Control Act, Cap. 200 does not state which Court has jurisdiction to determine bail when value is not disclosed. I quote it bellow for easy of reference; -

(4) After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purposes of this section the power to hear bail applications and grant bail-

(a) between the arrest and the committal of the accused for trial by the Court, is hereby vested in the district court and the court of a resident magistrate if the value of any property involved in the offence charged is less than ten million shillings;

(b) after committal of the accused for trial but before commencement of the trial before the court, is hereby vested in the High Court;

(c) after the trial has commenced before the Court, is hereby vested in the Court;

(d) in all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court.

Yet, as correctly submitted by Ms. Mbughuni, Article 108(2) of the Constitution of United Republic of Tanzania, 1977 vests the High Court with jurisdiction to determine any matter which that the law does not expressly provide which Court have jurisdiction. I quote hereunder again for swift reference:

108.(2) Iwapo Katiba hii au Sheria nyingine yoyote haikutamka wazi kwamba shauri la aina iliyotajwa mahsusi litasikilizwa kwanza katika Mahakama ya ngazi iliyotajwa mahsusi kwa ajili hiyo, basi Mahakama Kuu itakuwa na mamlaka ya kusikiliza kila shauri la aina hiyo. Hali kadhalika, Mahakama Kuu itakuwa na uwezo wa kutekeleza shughuli yoyote ambayo kwa mujibu wa mila za kisheria zinazotumika Tanzania, shughuli ya aina hiyo kwa kawaida hutekelezwa na Mahakama Kuu.

On the strength of the above cited law together with the principles stated in the case of **Suleiman Masoud Suleiman and another v. Republic, Criminal Application No. 10 of 2020** (unreported), I am of the firm view that, the High Court has jurisdiction to determine bail of the Applicant under the prevailing circumstances where, the holding charge does not state value of the property.

For that reason and on the bases that, the offences the Applicant is charged with are bailable, he as well has right of bail pending hearing of his main case. This Applicant's application is accordingly granted. I thus

proceed to direct the District Court of Kahama to admit the Applicant to bail upon fulfilling the following conditions: -

- a) The Applicant to sign a bail bond of Tshs. 10,000,000/-
- b) The applicant to have two reliable sureties who should sign a bail bond of Tshs. 2,000,000/- each.
- c) The Applicant to surrender his passport or any travel documents to the Police Station.
- d) The Applicant, on monthly basis should report to the police station till he is committed to the Economic and Corruption Crimes Division of the High Court for trial, or where the District Court of Kahama is clothed with jurisdiction to try that economic offence.

It is so held and ordered accordingly.


Gerson J. Mdemu
JUDGE
14/06/2021

DATED at SHINYANGA this 14th day of June, 2021.


Gerson J. Mdemu
JUDGE
14/06/2021



