

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

DC. CRIMINAL APPEAL NO. 14 OF 2021

*(Originating from Tabora Resident Magistrate Court in Economic Crime
Case No.14 of 2021)*

OMARY KAFUYE @ BEGUYE.....APPELLANT

VERSUS

THE REPUBLICRESPONDENT

RULING

Date: 02/6/2021- 06/8/2021

BAHATI,J.:

By way of chamber summons made under the provisions of Section 29(4)(d) and 36(1) of the Economic and Organized Crimes Control Act, Cap.200 as amended by the Written Laws (Misc. Amendments) Act, No.3 of 2016 and any other enabling provision of the laws;

- i. This Honorable Court be pleased to grant bail to the applicant Omary Kafuye Beguye pending the determination of the Misc. Economic Crime Application No.14 of 2021 in the Resident Magistrate's Court of Tabora at Tabora.*

The application has been supported with an affidavit sworn by Ms. Flaviana Francis, learned counsel for the applicant. The applicant is applying for bail pending trial of the Economic Case No. 14 /2021 in the Resident Magistrates court for Tabora at Tabora.

It is evident from the second paragraph of the affidavit that the applicant on diverse dates of February, 2021 was arrested and arraigned before the Resident Magistrate's Court of Tabora with one count namely unlawful possession of government trophies. That, the value of the alleged government trophies valued at TZS.34, 710, 000/= as per the charge sheet dated 25th February, 2021.

It is not in dispute that the Resident Magistrate's Court has no jurisdiction to try the offence and to entertain any bail application. It is the High Court with vested jurisdiction to deal with the application for bail in all economic offences where the monetary value of the alleged government trophies exceeds 10 million shillings and the offences which the applicant stand charged is bailable offence by the court.

That the applicant is a Tanzanian and has credible and reliable sureties residing in Tabora region who will meet the conditions to be set by this court and will make sure that they appear all the time before the court and comply with the bail conditions.

In this case, the respondent objected to the application through the counter affidavit of Rwegira Deusdedit, Senior State Attorney.

During the hearing, the applicant was represented by Ms.Flaviana Francis, learned counsel and the respondent had the services of Mr.Miraji Kajiru, learned Senior State Attorney.

In her submission, the counsel for the applicant prayed to this court to adopt the affidavit to form part of her submission. Further that, bail is the right of the applicant according to Article 13 (6) (b) of the Constitution of the United Republic of Tanzania. She submitted that the applicant is still innocent until the contrary is proved. She prayed to this court for bail.

In response, the Senior State Attorney objected to the application. He submitted that since these offences happen every time and once granted bail the applicant will continue doing unlawful activities. He prayed to this court not to grant bail until the determination of the case.

In a brief rejoinder the applicants' counsel submitted that the respondent argument is unsubstantiated. The applicant is the first offender and no record or proof is showing if he had jumped bail. Since bail is both a statutory and constitutional right to the applicant, it is in the interest of justice that, application be granted.

Having heard from both sides, the issue for determination is whether the application is with merit or not.

Both parties are not disputing that the applicant has a right to apply for bail for the reason of exercising his constitutional rights and presumption of innocence.

Section 29(4) (d) of the Economic and Organized Crime Control Act, Cap 200 is vested with jurisdiction to determine an application for bail. Also, Article 13(6)(b) read together with Article 15 of the Constitution of the United Republic of Tanzania, 1977, provide for a presumption of innocence and guarantee to individual's liberty respectively. Accordingly, the applicant still enjoy the presumption of innocence until proven otherwise as was reiterated in the case of **Patel V R [1978] HCD** in which Biron J; held that,

“...Whilst awaiting trial is as of right entitled to bail, as there is a presumption of innocence until contrary proved...”.

It is undisputed that the offence with which the applicant is charged is bailable and as such whilst awaiting trial the applicant, as of right, are entitled to bail. It is worthwhile to note that bail is a right and should not be considered as a privilege to an accused person. I am also aware of the conditions set by section 36 of EOCCA which, *inter alia*, requires the accused person to pay cash bonds or to submit to the court the security whose value is at least half of the value of the property and the rest to be executed by a promissory note.

In the present case, it was deposed and asserted by the respondent that the applicant being charged with a serious economic offence and if granted will proceed to do illegal activities are sufficient justification for bail denial.

This court having examined this assertion has found that it is unfounded since no tangible evidence has been adduced to support the State Attorney's argument. As stated in **Lawrence Mateso V Republic 1996 TLR 118**, Samata J.K explained that;

“ ... In an application for bail pending trial the onus lies on the prosecution to satisfy the court that the interests of justice would or might be jeopardized if the accused is released on bail...”

This allegation should be justified and proved. In the circumstances, there are no sufficient grounds to refuse to grant bail. From the above reasons, I am satisfied that the offences under which the applicant is charged is bailable and the application is meritorious.

I hereby grant bail to applicant upon fulfilling the following conditions as stipulated under section 36(5)(a) to (d) of the Economic and Organized Crime Control Act, Cap.200 that;

- 1) The applicant shall deposit in Court cash TZS.17,355,000/= or Immovable property of equivalent value situated within Tabora Region,

- 2) The applicant shall have two credible and reliable sureties who will sign a bail bond equivalent to the respective half of the amount involved in the offence,
- 3) The applicant should have two credible and reliable sureties; with fixed abode within the jurisdiction of the trial court,
- 4) The applicant shall surrender all travelling documents to the Deputy Registrar – Tabora,
- 5) The applicant is restricted from travelling outside Tabora Region without prior written consent sought and granted by the Deputy Registrar – Tabora Region.
- 6) Each applicant shall be duty-bound to appear in court on all dates that shall be scheduled by the court
- 7) Bail conditions to be verified/ ascertained by the Magistrate at Tabora Resident Magistrates' Court assigned with the case before releasing the applicant on bail as above prescribed.

Order accordingly.



A. A. Bahati

A. A. BAHATI

JUDGE

06/08/2021

Ruling delivered under my hand and seal of the court in the open court, this 6th day August, 2021 and other procedures will be complied before the trial Resident Magistrate.



J. Katto
J. KATTO

For DEPUTY REGISTRAR

06/8/2021