

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA.

MISC. CRIMINAL APPLICATION NO. 11 OF 2021

(Originating from Economic crime case No.01 of 2021, in the Resident Magistrates' Court of Sumbawanga at Sumbawanga)

LINUS PATRICK KALANDAMWAZYE1ST APPLICANT

SALEZI SINDANI2ND APPLICANT

VERSUS

THE REPUBLICRESPONDENT

Date of last order: 26/7/2021

Date of ruling: 3/08/2021

RULING

NDUNGURU, J.

This is a ruling on application for bail pending trial in an Economic Case No. 01 of 2021 before the Resident Magistrates' Court of Sumbawanga at Sumbawanga. The applicants in this matter are Linus Patrick Kalandamwazye and Salezi Sindani. The applicants have moved this court by way of Chamber summons supported by joint affidavit duly sworn by the applicants. This application is made under sections 29(4)(d) and 36(1)

of the Economic and Organized Crimes Control Act(Cap 200 R.E 2019)and section 148(1)(2) (3) of Criminal Procedure Act (Cap 20 R.E 2019).

Essentially, the affidavit deposed as herein: that the applicants are charged before the Resident Magistrates' court with offence of Occasioning loss to a specific Authority contrary to paragraph 10(1) of the first schedule to and section 57(1) and 60 (2) of the Economic and Organized Crimes Control Act, (Cap 200 R.E 2019). The value of the subject of the case is **315,119,510/=** the amount is above the value which the subordinate court can entertain bail.

The applicants further averred that they have reliable sureties with fixed place of living and substantial valuable movable and immovable properties. They are also ready to abide with bail conditions imposed to them. But of more important, the applicants have stated that the offences they are charged with are bailable in the eyes of law.

Initially, the respondent/Republic had not objected bail through counter affidavit. When the application was called upon for hearing, the applicants appeared themselves unrepresented. On the other hand Mr. Mwashubira Njoroyota, learned senior State Attorney represented the respondent/

Republic. In their submission in support of the application, the applicants prayed the court to adopt their affidavit arguing to have been in remand custody for a long time. Further that the offences they are facing are bailable. Furthermore, that this court has jurisdiction to entertain the application.

In his submission, Mr. Njoroyota learned senior State Attorney had no objection to the application. He said the court has jurisdiction to entertain the application and is properly moved. The applicants had nothing substantial to rejoin apart from reiterating her submission in chief and underscoring the prayers sought in the chamber summons.

The following positions of the law are also not disputed by the parties: that, offence with which the applicants are charged are bailable. This court, and not the lower court, has jurisdiction to entertain bail applications of this nature (where the value of the subject matter is ten million shillings and above). This position was also supported by the Court of Appeal of Tanzania (CAT) in the case of **Director of Public Prosecution v. Aneth John Makame, Criminal Appeal No. 127 of 2018, CAT at Dar es Salaam** (unreported). The stance of the law was further underscored by this court (my brother Mallaba, J as he then was) in

Salim s/o Majaliwa @ Mbengwa and 4 others v. Republic, Criminal Application No. 228 of 2018, High court of Tanzania (HCT) at Tabora (unreported).

It is also a clear position of our law that, bail is both a statutory and constitutional right for an accused person. The purpose of granting bail to an accused person is to let him enjoy his freedom as long as he shall appear in court for his trial; see **Hassan Othman Hassan @ Hassanoo v. Republic, Criminal Appeal No. 193 of 2014, CAT at Dar es salaam** (unreported). In that stance there is no reasonable ground for denying bail to the applicants in the matter at hand. It is more so considering the fact that, their application is not objected by the respondent/Republic.

A question that arises here is this; which amount of cash (or property valued at which tune) that the applicants will be required to deposit if granted bail? As the applicants stand charged jointly, they are thus, entitled to benefit from "the Principle of sharing". This principle was promulgated by the CAT in the case of **Silvester Hillu Dawi and another v. DPP, Criminal Appeal No. 250 of 2006, CAT, at Dar es Salaam** (unreported). It guides that, where more than one person are

charged with an offence of the nature mentioned above, then the amount to be deposited as bail condition should be shared among the accused persons for purposes of bail.

It follows thus that, by simple arithmetic, half of the amount involved in the charge sheet (i.e. Tshs. 315,119,510/= mentioned above) is Tshs. **157,559,755/=** (one hundred fifty seven million, five Hundred and Fifty nine Thousand and seven and fifty five hundred). When one equally divides this amount to the two accused persons according to the above highlighted principle of sharing, each of them shall be required to deposit Tshs **78,779,877/=** (Seventy eight Million, seven Hundred and seventy nine Thousand and Eight Hundred and seventy seven only).

Due to the above reasons, I find that, the applicants are entitled to the prayed bail. I accordingly, grant bail to the applicants on the following conditions which are mandatory as per section 36 (5) (a)-(d) of the **EOCCA:**

- a. That, the applicant shall deposit cash Tshs. 78,779,877/= (Seventy eight Million, seven Hundred and seventy nine Thousand and Eight Hundred and seventy seven only) or***

property worth that sum. Each applicant will have with two sureties (each) will sign bond at the like sum.

b. The applicants' sureties must be residents of Rukwa Region which is the geographical jurisdiction of the lower court.

c. In case the applicant will opt to deposit immovable properties in compliance with the condition set above, it shall be sufficient for them to deposit title deeds accompanied with valuation reports. If the title deeds will not be available, they shall adduce sufficient evidence to prove that their respective immovable properties actually exist; including valuation report showing the value of the property.

d. That, the applicants shall appear before the lower court on specified dates, time and place.

e. They shall also surrender their respective passport or any other travel documents (if any) to the Deputy Registrar of the High Court , and

***f. They are restricted from travelling outside Rukwa Region
(being the territorial jurisdiction of the lower court),
unless written leave is granted by the Deputy Registrar
who will serve a copy of the said leave to the lower court.***

The sureties envisaged under the conditions of bail set above shall be approved by the Deputy Registrar of this court. It is so ordered.




D.B. NDUNGURU

JUDGE

03/8/2021