

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 11 OF 2021

(C/F Economic Case No. 60 of 2018, in the Resident Magistrate Court of Arusha at Arusha)

MBEYE S/O ROLOMUNYE TWEPESEI.....1ST APPLICANT

HURUMAE S/O HAGAI NAMAN @ LOHAY.....2ND APPLICANT

JOHN S/O SAFARI @ AMSI.....3RD APPLICANT

JONAS S/O PETER @ MAFTAL @ NJARIY.....4TH APPLICANT

VERSUS

THE D.P.P.....RESPONDENT

RULING

28/07/2021 & 27/09/2021

GWAE, J

The applicants above have brought this application for bail under the provisions of section 149 of the Criminal Procedure Act Cap 20 R.E 2002, section 29 (4) (d) and 36 (1) of the Economic and Organized Crime Control Act Cap 200 R.E. 2002 read together with section 10 of the written laws (Misc. Amendments) Act No. 03 of 2016 for the orders that this Court be pleased to grant and release the applicants on bail pending trial of Economic Case No 60 of 2018 before the Resident Magistrates Court of Arusha.

The application is further supported by joint affidavit of the applicants which is to the effect that, the offence to which the applicants stand charged is a bailable offence, that they have reliable sureties who are ready to execute the bail bond and also their release on bail shall not prejudice the interest of the respondent. The respondent on the other hand was represented by the learned State Attorney **Ms. Lucas** who did not oppose the application.

In the Resident Magistrate's Court of Arusha the applicants stand charged of two offences; **first count**; unlawful possession of Government trophy contrary to sections 86 (1) & (2) (b) of the Wildlife Conservation Act, No.5 of 2009 read together with paragraph 14 of the 1st schedule to, and sections 57 (1) & 60 (2) both of the Economic and Organized Crimes Control Act (Cap 200 R.E 2002) as amended by sections 16 (a) and 13 (b) respectively of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016. **2nd count**, Unlawful dealing in Government Trophies contrary to sections 80 and 84 (1) of the Wildlife Conservation Act, No. 05 of 2009 read together with paragraph 14 of the 1st 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 sections 16 (a) of the Written Laws (Misc. Amendments) Act No. 03 of 2016

According to the charge it is alleged that on 24th August 2018 at Crater Rim Hotel in Karatu town within Karatu District, Arusha Region the applicants were

jointly and together found in unlawful possession of Government trophies to wit; five (5) pieces of elephant tusks equivalent to four killed elephants valued at USD 60,000 which is equivalent to **Tshs. 136,260,000/=**

Admittedly, an application for bail in the charge against which the applicants are charged with could not be entertained by the Resident Magistrates Court as the value of the subject matter which the accused persons are charged with has exceeded Tshs. 10,000,000/= as per Section 29 (4) (d) of the Economic and Organized Crimes Control Act. This court being a competent court for determination of this application, and taking into consideration the joint affidavit of the applicants and the fact that the respondent did not object the application I see no reason to refuse granting this application.

It is cherished principle of the law that a person is presumed innocent until proved guilty as it was correctly held in the case of **Patel vs. R** [1978] HCD in which **Biron J**; (as he then was) held inter alia that: -

"Man, whilst awaiting trial is as of right entitled to bail, as there is a presumption of innocence until the contrary is proved. I would say that the court should be guided by four main principles on the granting of bail pending trial. The first and foremost is that the court should ask itself whether the accused would be available at the trial. Secondly, whether the accused is likely to commit further offence if he is allowed out on bail in which case his character is certainly not irrelevant. Thirdly, whether the accused is likely to interfere with the


investigation by influencing witnesses or otherwise, and fourthly, the gravity of the accusation and the severity of the punishment if conviction results"

Guided by the above principle of the law and without undue regard to Article 13 (6) (a) of our Constitution of the United Republic of Tanzania, 1977, this court is bound to grant bail sought in favour on the following conditions pursuant to section 36 (5) of the Economic and Organized Crimes Control Act (supra);

1. Each applicant shall deposit hard cash Tshs. **17,032,500/=** or Other immovable property with title deed alternatively, with estimated value not below half the actual amount of money involved by an authorized valuer.
2. Each Applicant must have two sureties with introductory letters from the area of locality or from their employer(s).
3. Each surety shall sign a bail bond of Tshs. **8,516,000/=**.
4. Each surety must have either Passport or National Identity or Driving License or Voter's Card and the sureties' particulars must be clearly recorded.
5. The applicants, while on bail, may be out of the jurisdiction of the court only after leave of the court has been sought and obtained.

6. The applicants are to ensure that they do not commit any offence attracting a custodian sentence while on bail as doing may justify this court to cancel the bail
7. Approval of bail conditions set forth shall be done by the Deputy Registrar of the Court together with a State Attorney.

It is so ordered,


M.R. Gwae,
Judge.
27/08/2021

Court: Right of appeal explained in respect of the bail conditions set out herein above




M.R. Gwae,
Judge.
27/08/2021