

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. CRIMINAL APPLICATION NO. 48 OF 2021**

**(C/F Economic Case No. 63 of 2020, in the Resident Magistrate Court of Arusha at Arusha)**

**HASSANI S/O HAMIS SHEMAEZE.....1<sup>ST</sup> APPLICANT**

**ABDI S/O RAMADHANI MBWAMBO.....2<sup>ND</sup> APPLICANT**

**JULIUS S/O SAMSON MAMBOLEO.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

**16/06/2021 & 18/08/2021**

**GWAE, J**

In the Resident Magistrate's Court of Arusha at Arusha, the committing court, there is an Economic charge leveled against the applicants mentioned above. The Economic charge is in one count, namely; Unlawful Possession of Government Trophy to wit; unskinned meat of a giraffe with its tail and head valued at USD 15,000 equivalent to Tanzania Shillings Tshs. 34,636,050/= the property of the Government of the United Republic of Tanzania, contrary to sections 86 (1) (c) (ii) of the Wildlife Conservation Act, No. 5 of 2009 as amended by section 59 (a) and (b) of the Written Laws (Misc. Amendment No. 2) Act No. 4

of 2016 read together with paragraph 14 of the 1<sup>st</sup> schedule to, and sections 57 (1) and 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) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

Following the fact that the amount to which the applicants are charged with exceeds Tshs, 10,000,000/= (section **29 (4) (a)** of Cap 200), the jurisdiction of the committing court is therefore ousted from entertaining an application for bail. The applicants are now before this court seeking grant of bail pending committal at the Committing Court. This application has been referred under the provisions of Sections 149 of the Criminal Procedure Act Cap 20 R.E 2019, sections 29 (4) (d) and Section 36 (1) of the Economic and Organized Crime Act (supra) read together with Act No. 3 of 2016.

In their joint affidavit, the applicants stated that the offences to which they stand charged are bailable and that their release on bail will not prejudice the interests of the Republic. The applicants further urged this court to grant them bail as they have reliable sureties.

The respondent who in this case is represented by the learned State Attorney Ahmed Athumani Hatibu filed his counter affidavit which opposed the applicants' application on the reason that the applicants release on bail will interfere with investigation process of the case.

On the date fixed for hearing of this application, the applicants appeared in person, unrepresented while the respondent was represented by **Mr. Ahmed Hatibu**, learned State Attorney.

The applicants had nothing useful to add to what is already stated in their joint affidavit, Mr. Hatibu on the other hand insisted that the applicants' release on bail will interfere with the investigation process and more so, there is likelihood of the applicants to jump bail.

I have considered the applicants' application together with the objection raised by the respondent, however I am of the considered view that the arguments raised by the respondent that the release of the applicants on bail will interfere with the investigation machinery and the likelihood of the applicants to jump bail to be more of speculative as the learned State Attorney failed to substantiate his arguments as to how the applicants will interfere with the investigation of the case nor did he show cause as to how the applicants are likely to jump bail. Nevertheless, in line with the respondent's concerns I have taken into consideration the fact that the applicants' residence is not within the jurisdiction of this court, but this alone does not bar this court from granting bail to the applicants.

Furthermore, according to the wording of Section 29 (4) and 36 of the Act, the offences mentioned above are patently bailable subject to conditions as

stipulated under Section 36 (5) of the Act as amended by Section 10 of the Written Law (Miscellaneous Amendment) Act, No. 3 of 2016.

That being the position and taking into account that every accused person is presumed innocent till proved otherwise, the application is therefore granted on the following conditions pursuant to section 36 (5) of the Act:

1. Each Applicant shall deposit hard cash Tshs. **5,772,675/=** 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 shall have two sureties who must come from the area of the jurisdiction of this court with introductory letters from the area of locality or from their employer(s)
3. The sureties shall sign a bail bond of Tshs, **2, 886,337.00/=**
4. Each surety must have either Passport or National Identity or Driving Licence or Voter's Card and the sureties' particulars must be clearly recorded.
5. The applicants are prohibited to leave the jurisdiction of this Court without a leave of either the committing court or this Court.

6. The applicants are to ensure that they do not commit any offence attracting a custodian sentence while on bail, in the event they commit any offence they shall show cause why their bail should not be cancelled.

7. Bail conditions set forth with shall be done by the Deputy Registrar of the Court together with a State Attorney.

It is so ordered,



**M.R. Gwae,**

**Judge.**

**18/08/2021**

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



**M.R. Gwae,**

**Judge.**

**18/08/2021**