

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

**IN THE DISTRICT COURT OF REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. ECONOMIC / CRIMINAL APPLICATION NO. 44 OF 2021**

**(C/F Economic Case No. 73 of 2020, in the Resident Magistrate Court of Arusha at Arusha)**

**ATHUMANI S/O IDDI FWAJA @ ETASO.....1<sup>ST</sup> APPLICANT**

**LABU S/O OLOLA NAYCHANI.....2<sup>ND</sup> APPLICANT**

**VERSUS**

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

**RULING**

**28/07/2021 & 18/11/2021**

**GWAE, J**

The applicants above stand charged before the Resident Magistrate's Court of Arusha at Arusha with one (2) counts namely; Unlawful possession of Government Trophy contrary to section 86 (1) and (2) (b) of the Wildlife Conservation Act, No. 5 of 2009 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 section 16 (a) and 13 (b) of the written laws (miscellaneous amendment) Act No. 3 of 2016, second count; Unlawful dealing in Government Trophy contrary to sections 80(1) and 84(1) of the Wildlife Conservation Act No. 05 of 2009 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) respectively of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

As per the charge sheet dated 2<sup>nd</sup> November 2020, it is alleged that the applicants jointly and together were found in unlawful possession of Government trophies to wit eleven (11) Elephant Tusks which is equivalent to six killed elephants valued at USD 90,000 equivalent to Tshs. 201, 894,300/=.

As an application for bail in the charge against which the accused persons now applicants are charged is not tenable by the subordinate court, the applicants have filed this application under the provisions of sections 149 of the Criminal Procedure Act Cap 20 R.E. 2019, section 29 (4) (d) and Section 36 (1) of the Economic and Organized Crimes Control Act Cap 200, R. E, 2019 read together with section 10 of the Written Laws (Misc. Amendments) Act No. 3 of 2016 seeking for an order of grant of bail pending trial.

When this application was scheduled for hearing before me, the applicants appeared in person, unrepresented while the respondent was represented by Ms. Lucas, the learned State Attorney who did not resist the application.

Since the accused person is presumed innocent till proved otherwise as provided for under Article 13 (6) (a) of our Constitution, 1977 and since the offence


with which the applicants are charged are legally bailable, this court has therefore no valid reason to refuse the applicants' bail (See **DPP vs Daud Pete** [1993] TLR. 22, **Panjuvs R** (1973) EA. 282, **Jaffer vs. Republic** (1973) EA, 39, and **Tito D. Lyimo vs. Republic** (1978) LRT 55.

The applicants are consequently admitted to bail subject to fulfillment of the following conditions;

1. As the amount of money appearing in the charge is **Tshs. 201,894,300/=** the amount is therefore divided equally among the two accused persons, applicants herein.
2. Each applicant shall deposit hard cash Tshs. **50,473,575/=**. Or other immovable property with title deed/offer or alternatively immovable property with estimated value (valuation report) not below Tshs. **50,473,575/=**.
3. Each applicant shall have two sureties from either public or private office with introductory letters from the area of locality or from their employer (s).
4. The applicants' respective sureties shall sign a bond of Tshs, **25,000,000/=** each.


5. Each surety must have either Passport or National Identity or Driving License or Voter's Card and the sureties' particulars must be clearly recorded.
6. The applicants shall be required to appear before the committing court of this court whenever required to do so.
7. 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.
8. The applicants are to ensure that they do not commit any offence attracting a custodian sentence while on bail as doing so may justify this court to cancel the bail
9. Approval of the 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.**  
**18/08/2021**

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



  
**M.R. Gwae,**  
**Judge.**