

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

**CONSOLIDATED MISC. ECONOMIC APPLICATIONS NO. 7, 8 & 9 OF
2021**

*(Original Economic Crime Case No. 01 of 2021 in the Resident Magistrates'
Court of Kigoma at Kigoma, before Hon. Maliki, SRM)*

- 1. HERMAN NDIBOTO SHIMBE**
- 2. MORRIS CHARLES MCHINDIUZA**
- 3. MADARAKA ROBERT MADARAKA**
- 4. LUSUBILO ANOSISYE MWAKYUSA**

.....APPLICANTS

VERSUS

THE REPUBLIC.....RESPONDENT

R U L I N G

04/08/2021 & 04/08/2021

A. MATUMA, J.

This is an application for bail pending trial. The applicants are standing charged in the Resident Magistrate's Court of Kigoma at Kigoma for twenty-one counts namely; one count of Leading Organised Crime, nineteen counts of Embezzlement and Misappropriation and one count of Occasioning loss to a specified authority. The offences have been preferred under the Prevention

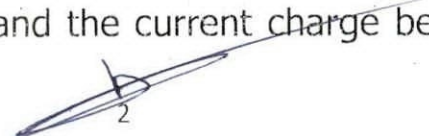
and Combating of Corruption Act no. 11 of 2007 and the Economic and Organised Crimes Control Act, Cap. 200 R.E 2002 as amended.

They are alleged to have at different times violated their official duties as public officials of Tanzania Ports Authority for promoting objectives of a criminal racket thereby occasioning pecuniary loss to Tanzania Ports Authority of Tanzania shillings six hundred nineteen million, two hundred seventy-eight two hundred sixty and fifty cents (**Tshs. 619, 278, 260.52**).

It is alleged that the applicants allowed one Eliya S. Ntinyako through Ntinyako Company Limited to fraudulently misappropriate such amount in different instalments as per charge sheet on different months of the year 2017, 2018, 2019 and 2020.

At the hearing of this application the Applicants were absent incarcerated in Prison but were dully represented by Mr. Kassim S. Gilla, Ignatius R. Kagashe Sadiki Aliko and Stephano John learned advocates. Mr. Shabani Juma Masanja learned State Attorney appeared for the Respondent/Republic.

Mr. Kassim Gilla learned advocate submitting on behalf of his fellow advocates for the applicants submitted at length in support of the application arguing that initially the applicants were subjected to among other offences the offence of money laundering which is unbailable. He submitted that such offence has been withdrawn and the current charge bears offences which



are bailable and not under the restrictions under section 36 (4) (a) to (f) of the Economic and Organised Crimes Control Act, Cap. 200 R.E 2019 nor under section 148 (5) (a) (i) to (vi) of the Criminal Procedure Act, Cap. 20 R.E 2019.

He further submitted that granting bail to the applicants won't be detrimental to the interest of justice and good order of the society. He cited the case of **Halifani Abdallah versus Republic (1986) TLR 226** to that effect.

He also submitted that the applicants through their respective affidavits in support of this application have stated clearly that they have reliable sureties who are ready to stand for them. To cement this argument the learned advocate cited the case of **Onasaa Shererengwa Msusi versus Republic (1984) TLR 170** in which this court held that if the applicant has reliable sureties who undertakes to produce him in court whenever needed, he is entitled to be granted bail.

Mr. Sadiki Aliko learned advocate then took over and added that they effected service to the respondent but she has not filed counter affidavit. Therefore, it should be taken to mean that the respondent has no objection to the prayers of the applicants to be admitted on bail pending trial. He also added that through the applicants' affidavits it is clearly stated that they have permanent homes and thus traceable and available whenever needed. Mr.

Kagashe learned advocate added that granting the applicants bail pending trial won't be detrimental to the prosecution's plan as investigation of the matter is complete and the applicants have been and still are incarcerated in remand custody since August, 2020 the period of which the prosecution has already carried her investigation.

On his part Mr. Shabani Juma Masanja learned state attorney did not object the application. He only drew the attention of this court to the Requirements of Section 36 (5)(a) to (d) and 36 (6) (a) to (c) of the Economic and Organized Crimes Control Act, Cap. 200 R.E. 2019.

In the circumstances that the offences under which the applicants stand charged are bailable and this court is vested with jurisdiction to determine this application and the fact that the Respondent does not have any objection for the applicants to be released on bail pending trial, nor there is any Counter affidavit or the DPP's Certificate objecting bail to the Applicants I agree with the learned advocates for the Applicants that the Applicants deserves to be released on bail pending trial on the good and sound reasons they have advanced as herein above which I need not reproduce as they are uncontroverted along with the cited authorities supra.

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a long horizontal stroke.

I therefore allow this application and order that the applicants be released on bail pending trial on the following bail conditions, the principle of sharing having been considered: -

- i. *Each applicant to deposit in Court cash money **Tshs 77,409,782/=** or a title deed of an immovable property of an equivalent value. If the title deed is not available, then any other such proof of the existence of the property to the satisfaction of the Court.*

For clarity the cash to be deposited or the title deed need not be the property of the accused in person. It might be of any other person who volunteer them to be deposited for and on behalf of each applicant and who shall also appear in Court to undertake on record the risks of putting his/her properties as a bond for the applicant.

- ii. *Each applicant to have two reliable sureties who shall each sign a bond of Tshs **38,704,891/=***

- iii. *Each of the sureties must have an introduction letter from the local leaders of his or her place of residence and if he or she is an employee then an introduction letter from his employer. The Employer must be a registered body under the Laws of the land.*



- iv. *Each of the sureties must have a recognized identity card with a copy of it which shall remain in the case file after scrutiny of the original Identity Card.*
- v. *Each applicant should surrender to the Police station his passport or any other travelling documents if any.*
- vi. *Each applicant should not travel abroad without a prior written consent of the Resident Magistrate Incharge of the resident Magistrate's Court of Kigoma.*

It is so ordered.




A. MATUMA,

JUDGE,

04/08/2021

Court: The applicants should be brought before the Magistrate who has been assigned with the case file in the Resident Magistrates' Court of Kigoma for approval of sureties if any. If the trial magistrate won't be available at the moment then the Resident Magistrate Incharge or the Acting Resident Magistrate Incharge whomever present at the station.

It is so ordered.

Sgd: A. MATUMA,

JUDGE,

04/08/2021