

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC. ECONOMIC APPLICATION NO. 140 OF 2021**

*(Originating from Economic Crime Case No. 51 of 2021 at the Resident Magistrate's Court of Dar es Salaam at Kisutu before Hon. Isaya, SRM.)*

**LULU VICTOR KAYOMBO ..... 1<sup>ST</sup> APPLICANT**

**LILIAN ONAEL KILEO ..... 2<sup>ND</sup> APPLICANT**

***VERSUS***

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

**RULING**

***Date of Ruling: 3<sup>rd</sup> August, 2021***

**A.R. MRUMA, J.**

This is an application for bail. The prosecution does not oppose the application. That notwithstanding Mr. Abdillah Hussein, Counsel for the Applicant is praying for an adjournment of the matter on the ground that lead Counsel for the Applicant Dr. Alex Nguluma is indisposed and he will be available tomorrow.

I have considered this prayer and I decline to grant the adjournment sought, as in my view Dr. Nguluma, will have nothing material to argue and add in an uncontested application. Instead of grating an adjournment I would proceed to grant bail to the Applicants as prayed.

I note from the charge sheet attached to the Chamber Summons that the offence with which the accused persons are charged involve properties

whose value is estimated at T.shs. 500,000,000/= (for the 2<sup>nd</sup> count) and Tshs. 246,000,000,000/= (For the third count) respectively. This is a colossal amount of money. The law under section 148 (5) (e) of the Criminal Procedure Act (Cap. 20 R.E. 2019) requires a deposit of cash money or other property equivalent to half the amount or value of actual money or property involved and the rest be executed by execution of a bond.

I have carefully considered that requirement of the law under Section 148 (5) (e) of the CPA and the amount of money involved in the charge against the accused persons in this application versus the purposes of bail in law and I have formed a considered opinion that while requiring the accused person to deposit cash money amounting to half the amount involved in the charge may be realistic where the amount involved is T.shs. Ten Million (i.e. the minimum threshold prescribed by the law), but where like in the present case a colossal amount of money is mentioned in the charge, to require the accused to deposit half the amount will amount to denying him bail.

As stated hereinbefore, in the present case the amount involved is T.shs 500,000,000/ and 246,000,000,000/=. This is huge amount of money. To require the accused to deposit in court (or anywhere else) half of that amount will not be realistic. In the first place courts do not have safe deposit lockers, vault storage doors, and/or strong rooms capable of keeping such huge amount of money. I am saying so because the law under Section 148 (5) (e) which requires deposit of half the amount involved in the charge does not direct as to where such deposits should be

made, therefore by reading the letters of the law the deposit should be made to the court.

Secondly, requiring the accused to deposit huge amount of cash is in my opinion tantamount to requiring him/her to buy his/her freedom at a very high price which will go contrary to the purposes of bail which is simply to ensure that the accused will appear for his/her trial and comply with all court orders subsequent to the grant of bail.

Thirdly, putting/imposing bail conditions which will virtually mean denial of bail may contravene the provision of Article 13 (6)(b) of the constitution of the United Republic of Tanzania, 1977 which provides that: -

*"No person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence"*

In the case of **Tito Douglas Lyimo Versus Republic 1978 LRT n. 55**, this court (Mwesiumo J) as he then was held that:

*"The court should not refuse bail to an accused person as form of punishment. To do so would be to punish the accused before pronouncement of his verdict"*

Reading section 148 (5) (e) in light of the above quoted article of the grand law, and the cited decision of this very court, one may correctly say that the intention of the legislature in enacting section 148 (5) (e) of the Criminal Procedure Act was to set up fair conditions which would bind the accused to appear for trial and other orders prior to and during his/her trial. The legislature did not intend to enact it to punish the accused. No

wonder in the case of the **Director of Public Prosecution Versus Daudi Pete (1993) TLR 22**, the Court of Appeal made a blanket observation that under Section 148 (5) (e) of the Criminal Procedure Act, courts have discretion to grant bail to persons accused of offences specified under Section 148 (5) (e) of the Act. Like any other court's discretion, the discretion under section 148 (5) (e) has to be exercised judicially taking into account inter alia the fact that in terms of Article 107A (1) of the Constitution, judiciary and to be precise court is the authority with final decision in dispensation of justice. If an accused person is denied bail by the court for offences which are bailable, or if a court imposes harsh or 'unconditional' bail conditions which cannot be fulfilled for those offences the accused will have no other forum where to reclaim his liberty. No wonder, it is trite law that bail conditions should not be excessive.

In the case at hand the accused are being charged of the offence of occasioning loss to a specified authority to wit, the Tanzania Ports Authority. The particulars of the 2<sup>nd</sup> offence charged suggest that they caused the said authority to suffer pecuniary loss of T.shs 500,000,000/= and in the second count they suggest that the accused did steal diesel worth T.shs 246,000,000,000/=. The particulars of the second offence do not show how the figure of T.shs 500,000,000/= claimed to be value of the loss occasioned was arrived at and what actually was done to cause that loss, while those of the 3<sup>rd</sup> count do not specify from which companies the monies were stolen.

Section 148 (5) (e) of the CPA, provides that:

*"...a court before whom an accused person is brought or appears shall not admit that person to bail if*

*(e) the offence with which the person is charged involves actual money or property whose value exceeds ten Million shillings unless that person deposits cash or other property equivalent to half the amount or value of actual money or property involved....."*

The term "actual" is defined by Oxford English Dictionary as "existing in fact or real". The question that would follow is whether the amount indicated in the charge sheet is actual or real. Reading particulars of both counts there can be no doubt that the amount stated cannot be real. As stated hereinbefore, loss stated under count one lacks sufficient particulars to show how and what was done to cause the alleged loss to the Tanzania Ports Authority. Similarly sufficient particulars are wanting regarding oil companies whose monies were stolen. The prosecution cannot be blamed for that because for undisclosed reasons they decided to charge the accused before completing investigations.

Having that in mind, I think judicial discretion in this case will be judicially exercised if this court dispense with the requirement of depositing half the 'actual' money involved because that 'actual' money is not established. In the circumstances I order the

accused persons to fulfill the following conditions before they can be released on bail:

- i. Each accused person must sign a bail bond of T.shs 246,000,000,000/= not cash and secure three reliable sureties who are ready and willing to sign bail bonds in the same amount not cash;
- ii. One of the three sureties must be an employee of the government of the United Republic of Tanzania or any reputable Public Institution or Parastatal.
- iii. Any one of the sureties must deposit with the court (The Resident Magistrate Court of Dar es salaam at Kisutu) a title deed of immovable property or any other property owned by him/her with estimated valued of T.shs. 250 million. In the event the title deed is not available any other evidence as it will be satisfactory to the court approving the surety of the existence of the property.
- iv. every accused shall surrender his/her passport (If any) to the Immigration Department, provided that in the event he/she wants to travel abroad, and upon applying to the court approving surety and an order to that effect, the Immigration shall give him/her the passport for the purpose.

**A. R. Mruma**

**JUDGE**

**3/8/2021**

**ORDER:**

These records and orders herein shall be immediately after this ruling be transmitted to the Resident Magistrate In-charge of Dar es salaam Resident Magistrate Court at Kisutu before Friday, the 6<sup>th</sup> day of August, 2021 at 9.30 am for approval of sureties.



**A. R. Mruma**

**JUDGE**

**3/8/2021**

**COURT:**

Pronounced in open court in presence of Ms. Elizabeth, learned State Attorney and Dr. Nguluma, counsel for the Applicants who joined the court at the time of pronouncing of the ruling, this 3<sup>rd</sup> day of August, 2021.

Right of appeal fully explained.



**A. R. Mruma**

**JUDGE**

**3/8/2021**