

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

AT SUMBAWANGA DISTRICT REGISTRY

**CONSOLIDATED MISCELLANEOUS CRIMINAL
APPLICATIONS No. 7 & 8 OF 2021**

**Originating from Economic Crime Case No. 1 of 2021 of
the District Court of Sumbawanga**

FELIX ALFRED LYOWAH.....1ST_APPLICANT

JACKSON STANLEY MSUYA.....2ND_APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

Date of Last order: 02/06/2021

Date of Ruling: 03/08/2021

RULING

C. P. MKEHA,J

The two applicants are being charged with economic offences before the District Court of Sumbawanga. The applicants were arraigned on 22/02/2021 before the District Court of Sumbawanga it being alleged that, they did conspire to commit an offence of malicious damage to property and that, they

actually damaged equipments valued at TZS. 172,000,000/=.

The specific count containing the said economic offence is the second count in which it is alleged that, contrary to section 326(1) of the Penal Code read together with paragraph 20(1) and (2) (b) and 3 (a) of the first schedule together with section 57(1) and 60(2) of the EOCCA, on 15th day of July, 2019 at Laela Area within Sumbawanga District and Rukwa Region, the applicants, did willfully and unlawfully damage water pumping station and its equipments valued at TZS. 172,000,000/= the properties of Sumbawanga District Council. Few days after their respective arraignment, the duo applied for bail before this court in two distinct applications. Since the applications originate from the same case, similar reliefs being sought before this court, it was agreed that they be consolidated leading to the present ruling.

Whereas the 1st applicant was represented by Mr. Budodi learned advocate during hearing of the applications, the 2nd applicant appeared in person. On the other hand, Mr. Mwashubila learned Senior State Attorney appeared for the Respondent/ Republic.

Submitting in support of the application for the first applicant, Mr. Budodi learned advocate stated that, the application is made under sections 29(4) (d) and 36 (1) of the EOCCA. The learned advocate adopted the affidavit and supplementary affidavit in support of the application, to form part of his submissions. According to the learned advocate, the two affidavits contain reasons in support of the application. The learned advocate went on to submit that, the application originates from Economic Crime Case No. 1/2021 of the District Court of Sumbawanga and that, since the value involved is TZS. 172,000,000/=, it is within the jurisdiction of this court to grant bail.

The learned advocate submitted further that the charged offences are bailable and that the applicant resides in Sumbawanga. The learned advocate finally urged the court to take into account the sharing principle while fixing bail conditions to the two applicants.

The second applicant prayed to be granted bail basing on reasons in support of the application contained in his own affidavit. He adopted all the contents of the said affidavit as part of his submissions.

Mr. Mwashubila learned State Attorney had no objection to granting of bail in respect of the second applicant. He however objected granting of bail to the first applicant. According to the learned Senior State Attorney, the Director of Public Prosecutions had filed a certificate objecting bail in respect of Felix Alfred Lyowah, the first applicant. The learned Senior State Attorney submitted that, in terms of the Certificate filed in court, safety and interests of the Republic would be prejudiced if bail is granted to the first applicant.

When Mr. Budodi learned advocate rose to rejoin, he drawn attention of the court to the effect that, the purported Certificate is objecting bail in respect of Economic Crime Case No. 8 of 2019 of the Resident Magistrate Magistrate`s Court of Sumbawanga. He then reminded the court that, the present applications trace their genesis from Economic Crime Case No. 1 of 2021 in the District Court of Sumbawanga. The learned advocate insisted that, a certificate objecting bail must relate to a pending criminal trial or appeal. The decision in **DPP Vs. Ally Nur Dirie and Another (1988) T.L.R 252** was cited.

As correctly submitted by the learned counsel for the parties, as well as the second applicant who appeared in person, the offences with which the applicants stand charged are both

bailable. As such, following decision of the Republic of not objecting bail in respect of the second applicant, there is no legal or factual issue involving the said applicant in the present applications. As to the first applicant, the only determinative issue is **whether a certificate of the Director of Public Prosecutions filed in respect of a criminal trial or appeal not pending before the court is effective for purposes of objecting bail.**

There was no denial on part of the learned Senior State Attorney to the fact that, the Certificate filed by the Director of Public Prosecutions for purposes of objecting bail does not relate to Economic Crime Case No. 1 of 2021 of the District Court of Sumbawanga, the genesis of the present applications. To the contrary, the Certificate relates to Economic Crime Case No. 8 of 2019 that has no bearing to the applications, now under consideration.

In terms of the decision in **DPP Vs. ALLY NUR DIRIE & ANOTHER (supra)** for a certificate in the nature filed by the DPP to be valid and effective, the following conditions have to be fulfilled:

- (i) The D.P.P must certify in writing;

- (ii) The certificate must be to the effect that the safety or interests of the United Republic are likely to be prejudiced by granting bail in the case and
- (iii) The certificate must relate to a criminal case either pending trial or pending appeal.

In the present case, the D.P.P did indeed certify in writing that safety and interests of the Republic would be prejudiced if the first applicant is granted bail. However, the Certificate was filed in respect of Economic Crime Case No. 8 of 2019 and not Economic Crime Case No. 1 of 2021 to which the present applications relate. As such, condition No. 3 as per the decision in **D.P.P Vs. ALLY NUR DIRIE & ANOTHER (supra)** was not met. The certificate is therefore ineffective. Following the holding hereinabove, I proceed to direct that the two applicants be released on bail upon fulfilling the following bail conditions which are fixed bearing in mind the sharing principle as applicable in bail applications involving more than one applicant:

- (i) Each applicant to deposit in court TZS. 43,000,000/= or a certified of occupancy in respect of immovable property worth the said amount.
- (ii) Each applicant to execute bail bond in the sum of TZS. 43,000,000/=

- (iii) Each applicant to have two reliable sureties ready to execute bail bonds of TZS. 25,000,000/= in the like sum.
- (iv) Each applicant to surrender travelling documents (if any) in his possession to the police.

Approval of sureties to be done by the learned Magistrate before whom, Economic Crime Case No. 1 of 2021 of the District Court of Sumbawanga is assigned.

Dated at Sumbawanga this 3rd day of August, 2021.




C. P. MKEHA

JUDGE

03/08/2021

Date - 03/08/2021
Coram - Hon. M. Kasonde – Ag, DR.
For Applicant - Mr. Budodi – Advocate – Advocate
1st Applicant - Present
2nd Applicant - Present in person
Respondent - Mr. Kabengula – State Attorney
B/C - J.J. Kabata

Mr. Kabengula State Attorney: Your honor this matter comes for Ruling and we are ready.

Mr. Budodi – Advocate for 1st Applicant: We are prepared too
2nd Applicant: I am ready.



Sgd: M.S. Kasonde

Ag, Deputy Registrar

03/08/2021

Court: Ruling delivered in open court this 3rd August, 2021 in the present of both applicants and Mr. Budodi – Advocate for the 1st applicant and Mr. Kabengula State Attorney for the Republic (Respondent).




M.S. KASONDE
AG, DEPUTY REGISTRAR
03/08/2021

