

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

MISC. CRIM. APPLICATION NO. 165 OF 2021

(Arising from Economic Crime Case No. 54 of 2021 pending before the
Court of the Resident Magistrate for Dar es Salaam at Kisutu)

MWASHABANI MASUDI DUMA.....1ST APPLICANT
KUMBUKA ATHUMANI KIMNDA.....2ND APPLICANT
VERSUS
THE REPUBLIC.....RESPONDENT

RULING

Date of Hearing & Ruling: 1/9/2021

MASABO, J:-

In this uncontested application, Mwashabani Masudi Duma and Kumbuka Athumani Kimnda, have jointly moved the court by way of a chamber summons filed under section 29 (4) (d) and 36(1) of the Economic and Organized Crimes Control Act, Cap. 200 R.E 2019. They are praying that; they be admitted on bail pending trial of Economic Crime Case No. 54 of 2021 before the Court of the Resident Magistrate for Dar es Salaam at Kisutu.

According to the charge sheet annexed to the application, the applications are jointly charged with two other persons of unlawful possession of government trophies contrary to section 86(1), (2) (b) and Part I of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the First schedule to the Act and section 57(1) and 60 (2) of the Economic and Organized Crime Control Act [Cap, 200 R.E 2002) as amended by Written Laws (Miscellaneous Amendments) Act No. 3 of 2016. It is alleged that they were found in unlawful possession of Government trophies to wit seventeen (17) elephant tusks worth 75,000 USD equivalent to Tanzania shillings one hundred seventy three million nine hundred twenty five thousand (Tshs 173,925,000/=).

During the *viva voce* hearing, Ms. Jacqueline Werema, learned State Attorney, informed the court that the Republic does not intend to object the bail. However, she reminded the court to be guided by the provision of section 36(5) and (6) regarding bail conditions.

For the applicants. Mr. Ladislaus Michael, learned advocate, prayed that the court be pleased to apply the principle of sharing in assessing the bail conditions and in specific, the amount payable by each of the applicant as there are many accused person jointly charged. He prayed further that the court be pleased to order that the security be in the form of immovable assets.

The question for determination is whether the applicants qualify for release on bail and if so, under what condition(s). Regarding the first question, having gone through the charge sheet, I am fortified that the offence against which the applicants are charged in Economic Crime Case No. 54 of 2021 before the Court of the Resident Magistrate for Dar es Salaam at Kisutu, is bailable but the application for bail could not be determined by the presiding court because the monetary value of the property involved in the offence exceeds the subordinate court's pecuniary bar of Tanzania Shillings ten million (Tshs10,000, 000/=) stated under section 29(4) (a) of the Economic and Organized Crime Control Act. Hence, it is well within the jurisdiction of this court.

Regarding the conditions for bail, section 36(5) of the EOCA (supra), prescribes mandatory conditions for bail. That, when granting bail, the court is mandatorily required to order the Applicant to deposit cash equal to half the amount or value of the property involved or in the alternative other property equivalent to half the amount or value of the property involved.

Under the premise, I hereby grant the application and order that each of the applicants be released on bail pending determination of Economic Crime Case No. 54 of 2021 currently pending before the Court of the Resident Magistrate for Dar es Salam at Kisutu upon fulfilment of the following conditions by each of them:

- i. Since the value of the property involved in the alleged committed offence is 173,925,000/= the half value of this amount which has

to be deposited in court as security is Tshs 86,962,500/=. As the offence was allegedly committed by four persons, when the principle of sharing is applied, it would follow that, each of the applicant shall deposit Tshs 21,740,625/=. **In the alternative**, each of the applicant shall deposit a Title Deed of an immovable property of the value not less than Tshs. 21,740,625/=. The immovable property shall be within Dar es Salaam and shall be free from any encumbrance.

- ii. The applicant must produce two (2) reliable sureties and each surety shall sign bail bond in the sum of Tshs 1,000,000/=. The sureties must be resident within Dar es Salaam with recognized place of abode and must have National ID or letter of introduction from their local leaders;
- iii. Each applicant shall surrender his/her passport or any travelling documents (if any);
- iv. The movements of the applicants shall be confined within Dar es Salaam and shall not leave without the permission of the Resident Magistrate in Charge of the Court of the Resident Magistrate for Dar es Salaam at Kisutu
- v. The applicants shall continue to attend to their case on the date and time scheduled;

I further order that the above securities be deposited at the Court of the Resident Magistrate for Dar es Salaam at Kisutu. The Resident Magistrate in Charge of the Court of the Resident Magistrate for Dar es Salaam at Kisutu

shall verify the sureties and all bail documents before the applicant is released on bail. It is accordingly ordered.

DATED at DAR ES SALAAM this 1st day of September 2021.

03/09/2021

X 

Signed by: J.L.MASABO

J.L. MASABO
JUDGE