

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

MISC. CRIMINAL APPLICATION NO. 204 OF 2021

*(Originating from Economic Case No. 24 of 2021 in the Resident
Magistrates Court of Dar es salaam Region at Kisutu)*

VICTOR ELIAS EVARIST.....1ST APPLICANT

RUKIA OMARY MBWANA.....2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of Order: 13/09/2021.

Ruling date: 14/09/2021.

E. E. Kakolaki, J

By way of chamber summons brought under certificate of urgency and supported by affidavit of one **Bennety Mtatiro Itangare**, advocate for the applicants, applicants are praying this court to grant them bail. The application has been preferred under Section 29(4)(d) and 36(1) of the Economic and Organised Crime Control Act, [Cap. 200 R.E 2019].

Before the Resident Magistrates Court of Dar es salaam Region at Kisutu in Economic Crimes Case No. 24 of 2021, both applicants are facing nine (9) counts under different offences the ninth being an economic offence. The

first count is on **Conspiracy to Defraud**; Contrary to section 306 of the Penal Code, [Cap. 16 R.E 2019] while the 2nd,3rd,4th,5th and 7th counts are for the offences of **Importation, Installation, Maintenance and Operating Electronic Communication Equipment and Operating Network Facilities all Without Licence**, all contrary to Section 106(3)(c) of the Electronic and Postal Communication Act, No. 3 of 2010 respectively. The sixth count is for the offence **Use of Unapproved Electronic Equipment Connected to Electronic Communication**, contrary to section 83(1) and 152(1) of the Electronic and Postal Communication Act, No. 3 of 2010 and the eighth count is **Fraudulent Use of Network Facilities**; Contrary to section 122(a) of the Electronic and Postal Communication Act No. 3 of 2010 read together with Regulations 71)(2)(a) and (b) of Electronic and Postal Communication (Telecommunications Traffic Monitoring System) Regulations, 2013, whereas the Ninth and last count is **Occasioning Loss to the Specified Authority**; Contrary to Paragraph 10(1) of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organised Crime Control Act, [Cap. 200 R.E 2019] herein referred to as EOCCA. It is alleged by prosecution in the ninth count that, the applicants in between 29/12/2020 to 09/02/2021 at Mgeninani, Mbagala area within Temeke District in Dar es salaal Region by their own will acts, caused the Government of United Republic of Tanzania and Tanzania Communications Regulatory Authority to suffer loss of Tanzanian Shillings **Fourteen Million Six Hundred Ninety Seven Thousand only** (Tshs. 14,697,000/). The rest of the counts have no value of the properties involved to assist this court

access and consider the conditions of bail. Thus assessment on value will rely on the ninth count only.

When the matter came for hearing before me on 13/09/2021 both applicants appeared represented by Mr. Godfrey Namoto learned advocate whereas the Republic (Respondent) enjoyed the services of Ms. Cecilia Shelly, learned Senior State Attorney. Adopting the affidavit in support of the chamber summons to form part of the submission, it was Mr. Namoto submission that, the offences with which the applicants are booked with before the subordinate court are bailable and that this court has jurisdiction to grant the application as prayed. The court was informed that applicants have reliable sureties with good standing and they have fixed abodes which guarantees their presence when traced or required by the court. He therefore prayed the Court to grant the application. Ms. Shelly for the respondent from the outset intimated to the court the respondent's will to support the application. She however, prayed the Court when exercising its discretion in setting bail conditions to impose reasonable ones that will guarantee applicants' appearance in court when needed. She added guidance on such conditions is provided under section 36(5) of the EOCCA, [Cap. 200 R.E 2019] and urged to court to be guided accordingly.

In determining this application regard has been paid to the affidavit in support of the application and the submissions made by both learned counsels. During the submissions both counsels were at one that the offences with which the applicants are facing are bailable and that this court has powers to entertain the application and grant them bail. It is in the applicants' affidavit that they could not apply for bail application before the

committal court as the value of the trophies subject of their charge exceed ten million (TShs. 10,000,000/). In this application, I have also considered the fact that the application is not objected by the respondent and the fact that they have reliable sureties ready to guarantee their presence in court when required, as well as their promise to abide to the court's condition should bail be granted to them, and therefore see no reason to deny them bail as it is their constitutional right. I therefore grant bail to the applicants as prayed. In fixing bail conditions this court has taken into consideration the provisions of sections 29(4)(d) and 36(5)(a)(b)(c)(d) and (6)(a)(b)(c) of EOCCA and order the applicant to comply with the following conditions:

1. The applicants are to deposit in Court cash half of Tanzania Shillings **Fourteen Million Six Hundred Ninety Seven Thousand only** (Tshs. 14,697,000/) or the property equivalent to half value of the said amount and the rest of the amount be secured by execution of bonds in writing. The principle of sharing to apply.
2. Each applicant has to provide two reliable sureties who are to execute a bond of Tanzanian Shillings two Million (Tshs. 2,000,000/ each, and to satisfy the court that sureties are either employees of the Government or possesses a National Identity Card issued by NIDA, with permanent residences within Dar es salaam Region.
3. The applicants should not leave the jurisdiction of the court without prior permission from the Resident Magistrates Court of Dar es salaam Region at Kisutu.

4. Verification of sureties and bond documents to be executed by the Resident Magistrate, at Resident Magistrates Court of Dar es salaam Region at Kisutu.
5. The applicants to surrender their passports and any other travelling documents (if any) to the Resident Magistrate, Resident Magistrates Court of Dar es salaam Region at Kisutu.

It is so ordered.

DATED at DAR ES SALAAM this 14th day of September, 2021.


E. E. KAKOLAKI
JUDGE
14/09/2021



Ruling delivered today 14th day of September, 2021 in the presence of Ms. Cecilia Shelly, Senior State Attorney for the Respondent and Ms. Monica Msuya, Court clerk and in the absence of the applicants.


E. E. KAKOLAKI
JUDGE
14/09/2021

