

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

**MISC. CRIMINAL APPLICATION NO. 207 OF 2021**

*(Originating from Economic Case No. 19 of 2019 in the Resident  
Magistrates Court of Dar es salaam Region at Kisutu)*

**MAJUTO ALLY NDEVU.....1<sup>ST</sup> APPLICANT**  
**SALEHE ABDALAH NGAUMBA.....2<sup>ND</sup> APPLICANT**  
**ZUBERI RAMADHANI MALENGETA.....3<sup>RD</sup> APPLICANT**

*VERSUS*

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

**RULING**

*Date of Order: 13/09/2021.*

*Ruling date: 17/09/2021.*

**E. E. Kakolaki, J**

The applicants herein by way of chamber summons supported by their joint affidavit, have moved 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] and is uncontested by the respondent as no counter affidavit has been filed to that effect.

Briefly before the Resident Magistrates Court of Dar es salaam Region at Kisutu in Economic Crimes Case No. 19 of 2019 the applicants are jointly and together facing a charge of Unlawful Possession of Government

Trophies; Contrary to section 86(1)(2)c)(ii) and (3)(b) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organised Crime Control Act, [Cap. 200 R.E 2002] as amended herein referred to as EOCCA.

It is alleged by prosecution in the said charge that, the applicants on 14<sup>th</sup> of February, 2019 at Kipunguni area within Ilala District in Region of Dar es salaam, were found in possession of Government Trophies namely; 3 pieces of elephant Tusks Valued at USD 45,000 equivalent to Tanzanian Shillings **One Hundred Eight Million Nine Hundred Ninety Thousand** (Tshs. 108,990,000/=) only, the property of the United Republic of Tanzania, without a permit from the Director of the Wildlife Division.

When the matter was called for hearing before me on 13/09/2021, all applicants appeared in person whereas the Republic (Respondent) was represented by Ms. Cecilia Shelly learned Senior State Attorney. Submitting in support of the application applicants adopted their affidavit to form part of their submission and prayed the court to grant the application as the offences with which they are charged with before the subordinate court are bailable and that this court has jurisdiction to grant the application as prayed. They asked the court to issue them with reasonable conditions as they are incapable of securing title deed. Ms. Shelly for the respondent on the other side from the outset notified the court that the respondent is not contesting the application as it was preferred under correct provisions of the law and the applicants are qualified to be considered for bail. She however, prayed the Court when exercising its discretion in fixing bail

conditions to impose reasonable conditions that will guarantee applicants' appearance in court when needed. She added, guidance to the court on bail conditions is provided under sections 36(5) of the EOCCA and prayed the court to be guided accordingly.

I have taken into consideration both parties submissions as well as traveling through the applicants' joint affidavit in support of the chamber summons. It is not in dispute the offences with which the applicants are facing are bailable and that this court has powers to entertain the application and grant them bail. Having considered the fact that, the application is not contested by the respondent as well as the fact that, applicants have reliable sureties ready to guarantee and secure their presence in court when required, and having promise to abide to the court's bail conditions should bail be granted to them, I find it just and proper to grant this application as bail is their constitutional right. With regard to the applicants' prayer to this court to dispense with the condition of ordering them to deposit a title deed, it is my considered view that law under section 36(5)(a) of EOCCA, [Cap. 200 R.E 2019] apart from cash allows deposit of other property equivalent to half of the actual money or value of the property involved in a situation where the charged involves actual money or property whose value exceeds ten million. Section 36(5)(a) same reads:

*(5) Where the Court decides to admit an accused person to bail, it shall impose the following conditions on the bail, namely-*

*(a) where 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 and the rest is secured by execution of a bond;***

*Provided that, **where the property to be deposited is immovable, it shall be sufficient to deposit the title deed, or if the title deed is not available such other evidence as is satisfactory to the court in proof of existence of the property;** save that this provision shall not apply in the case of police bail; (Emphasis supplied).*

It is noted from the above provision and its proviso that, the condition for depositing a title deed worth half of the value of the subject matter of the charge becomes mandatory where the applicant has chosen to deposit immovable property. Otherwise he is allowed to deposit other property including movable one so long as it is worth half of the value of the actual money or property involved in the charge. The law further allows, in a situation where the applicant is unable to deposit cash or the title deed, to present to the court sufficient evidence to prove existence of immovable property meant to be deposited as security for bail and not to dispense with such condition. Such evidence for proof of existence of immovable property in my opinion includes but not limited to residence licence (leseni za makazi).

The above being the position of the law and having considered the provisions of section 36(5)(a)(b)(c)(d) and (6)(a)(b)(c) of EOCCA, I hereby proceed to grant bail to the applicants, as I hereby do on the following conditions:


1. Applicants are to deposit in Court cash half of Tanzania Shillings **One Hundred Eight Million Nine Hundred Ninety Thousand** (Tshs. 108,990,000/=) or the property(s) 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. Should the applicants fail to secure title deed, the condition for presenting sufficient evidence to substantiate existence of immovable property to stand as security for bail as provided under the proviso of section 36(5)(a) of EOCCA, [Cap. 200 R.E 2019] shall apply.
2. Each applicant has to provide two reliable sureties who are to execute a bond of Tanzanian Shillings **Nine Million One Hundred Thousand** (Tshs. 9,100,000/ 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. 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. The applicants are to report to the Regional Crime Officer for Dar es Salaam Region according to the schedule prescribed by him/her.

5. Verification of sureties and bond documents to be executed by the Resident Magistrate, at Resident Magistrates Court of Dar es salaam Region at Kisutu.
6. The applicants are to surrender their passports and/or 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 17<sup>th</sup> day of September, 2021.



  
E.E. KAKOLAKI  
**JUDGE**  
17/09/2021

Ruling delivered today 17<sup>th</sup> day of September, 2021 in the presence of all applicants in person and Ms. Mwanaasha Pande, Court clerk and in the absence of the Respondent.



  
E.E. KAKOLAKI  
**JUDGE**  
17/09/2021