

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

**MISC. CRIMINAL APPLICATION NOS. 64 OF 2020; NO. 123 OF
2021; 142 OF 2021; 143 OF 2021; 192 OF 2021, AND 210 OF
2021.**

(Arising from Economic Crime Case No. 62 of 2018 before the Court of the Resident
Magistrate for Dar es Salaam at Kisutu)

- 1. KHALFAN HUSSEIN KAENGELE**
- 2. ISMAIL MALILO KASSA**
- 3. ABAS HASSAN @JABU**
- 4. KASSIM HASSAN SAID @ BEDUI**
- 5. ALLY ANGUZUU SHARIF**
- 6. VICTOR SERAPHIN MAWALLA**
- 7. PETER THOMAS NYACHIWA**
- 8. JOHN CHARLES BUHANZA**
- 9. HARUNA ABDALLAH KASSA**

APPLICANTS

VERSUS

REPUBLIC.....RESPONDENT

RULING

Last order: 1/10/2021

Ruling: 8/10/2021

MASABO, J.:-

The applicants and other three persons, not part to these applications, stand jointly charged in Economic Crime Case No. 62 of 2018 before the Court of the Resident Magistrate for Dar es Salaam at Kisutu for several offences involving: leading organized crime contrary to section 4(1), 57(1) and 60 (2) of the Economic and Organized Crime Control Act [Cap, 200 R.E 2002)

(EOCCA) for intentionally organizing buying, accepting, transporting and possessing government trophies and unlawful dealing in government trophies to wit, 660 pieces of elephant tusks valued at USD 2,105,181 equivalent to Tshs 4,570,347,751/= contrary to section 80(1) and 84(1) and part I of the First Schedule to the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14(b) of the First Schedule to the Act and section 57(1) and 60 (2) of EOCCA.

The applicants filed a total of six separate application applications for bail registered as: **Misc. Criminal Application No. 64 of 2020** filed by Khalfan Hussein Kaengele; **Misc. Criminal Application No.123 of 2021** filed by Ismail Malilo Kassa; **Misc. Criminal Application No. 142 of 2021** filed by Abas Hassan @Jabu; **Misc. Criminal Application No. 143 of 2021** filed by Kassim Hassan Said @ Bedui; **Misc. Criminal Application No.192 of 2021** filed by Ally Anguzuu Sharif, Victor Seraphin Mawalla, Peter Thomas Nyachiwa, and John Charles Bhanza and **Misc. Criminal Application No. 210 of 2021** filed by Haruna Abdallah Kassa. All these applications were made by way of a chamber summons made under section 29 (4) (d) and section 36(5) of the EOCCA supported by affidavit of the respective applicant/applicants.

Although filed separately, for convenience and expeditiousness, I have found it appropriate to consolidate all the application and determine them together for the following reasons: **First**, as stated above, all the applications emanate from the same criminal case, that is Economic Case No. 62 of 2018

before the Court of the Resident Magistrate for Dar es Salaam at Kisutu. **Second**, the sole prayer in all the chamber summons is that the applicant be admitted on bail pending trial of Economic Crime Case No. 62 of 2018 and **lastly**, as it will be demonstrated in the due course, all the applications were not contested.

When the application was called on for hearing, Ms. Elizabeth Mkunde, learned Senior State Attorney represented the Republic. The 3rd and 4th Applicant, Abas Hassan @Jabu and Kassim Hassan Said @ Bedui, respectively, were represented by Mr. Ambrose Nkwera, learned counsel; Ally Anguzuu Sharif, Victor Seraphin Mawalla, Peter Thomas Nyachiwa, the 5th, 6th and 7th applicant respectively, were represented by Mr. Josephat Mabula, learned counsel; John Charles Buhanza, the 8th Applicant, was represented by Mr. Mnilla Abdallah whereas the 9th Applicant, Haruna Abdalla was represented by Mr. Abdallah Said, learned. The rest of the applicants appeared unrepresented.

At the commencement of hearing of Misc. **Criminal Application No. 192 of 2021**, Ms. Mkunde, the learned Senior State Attorney informed the Court that, the Director of Public Prosecution prays to withdraw the certificate he had previously filed in court objecting the grant of bail to Peter Thomas Nyachiwa, which was invoked by this court to deny this applicant's previous application for bail in **Misc. Criminal Application No. 34 and 74 of 2020** which was determined by my learned brother, Kakolaki, J on 4th September 2020. Together with prayer, she tendered formal notice by the DPP

expressing his intention to withdraw the same. Upon the notice being filed and the Certificate marked as withdrawn, the learned State Attorney proceeded to submit that, having withdrawn the certificate, the Republic has no contention to the application.

A similar notification and prayer were advanced in respect of Misc. Criminal Application No. 64 of 2020 in which the DPP had previously filed a Certificate objecting the grant of bail to Khalfan Hussein Kaengele who is appearing herein as 1st Applicant. After the court accepting the formal notice and granting the leave for withdrawal of the certificate, the learned state Attorney, submitted that since the DPP no longer objects the grant of bail to this applicant, the court is at liberty to exercise its discretion on whether or not to admit this applicant on bail. As for the rest of the applicants, their applications were not objected.

All what the learned State Attorney asked from this court is the judicious exercise of the discretion to grant bail and that, should bail be granted to the applicants, the conditions for bail be consonant with the provision of section 36(5) of EOCCA and the ultimate goal of securing the attendance of the applicants to the trial. She also drew the attention of this court to the fact that Ally Anguzuu Sharif who is appearing as 5th applicant herein, is a foreigner with no property or permanent residence in Tanzania and invited the court to consider this fact in assessing the bail conditions for this applicant so that, the ultimate goal of bail, is not distorted.

The non-contentious nature of the application, attracted no lengthy submission from the applicants or for those represented, their respective counsels. Their main prayer was that, since the offences against which the applicants stand charged are bailable and the application are uncontested, the court be pleased to find merit in all the applications and admit all the applicants on bail. They also prayed for fair/lenient bail conditions. With respect to the 5th Applicant, his counsel, Mr. Mabula, replied that although it is true that this Applicant is a foreigner, there is no good reason why he should not be admitted on bail as he has reliable sureties who are willing and ready to bail him if this application succeeds.

The question for determination by this court is whether the applicants qualify for release on bail and if so, under what condition(s). Having examined the applications, the supporting documents and the submission by the counsels, there is no dispute that the offence facing the applicants in Economic Crime Case No. 62 of 2018 before the Court of the Resident Magistrate for the Dar es Salaam at Kisumu are bailable but the application for bail could not be determined by this court because the pecuniary value of the property involved in the offence exceeds Tanzania Shillings ten million (Tshs10,000,000/=) which is by virtue of section 29(4) (a) of the EOCCA, a pecuniary bar to the subordinate courts' jurisdiction in similar applications. Therefore, this court has jurisdiction to entertain the application and grant bail to the applicant pursuant to the law cited in the chamber summons and for the grounds which has been adduced thereto. Since the application were uncontested and we were told that the applicants have no criminal record

and there is no record that they have previously jumped bail which would impend their admission on bail, the first part of question, obviously attracts an affirmative answer. I will, however, shelf this question and revert to it later after I have addressed the bail conditions and the nationality status of the 5th Applicant.

Regarding the conditions for bail, much as I have heard the prayers for lenient/fair bail conditions, section 36(5) of the EOCCA, 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.

As for the nationality status of Ally Anguzuu Sharif, which I have given due consideration, it is undisputed from the charge sheet and as conceded by Mr. Mabula that Ally Anguzuu Sharif is a Guinean citizen. Luckily, this is not the first time a foreigner has moved our courts of law for admission on bail pending trial. There are several cases and one such of cases is **Edward D. Kambuga and Another v Republic** [1990] TLR 84, where while dealing with a similar issue, the Court of Appeal of Tanzania held that, foreigners should not be treated differently in our courts merely because they are foreigners. However, in deciding whether or not to grant bail to foreigner, the court must take into consideration the seriousness of the case facing the foreigner, whether for example, it is of such a nature that in the event of a

conviction, the stipulated penalty is so severe as to encourage escape from justice.

Relying on this authority and **HSu Chin Tai and Others vs. Republic**, this court, Korosso, J (as she then was), held as follows in **Edwin Gusongoirye and Steven Simon**, Misc. Economic Cause No. 28 of 2017, HC (Corruption and Economic Crimes Division) (unreported) which I cite in extenso to drive the point home.

We found the issue that the 1st applicant is not a national an important issue requiring due consideration on our part especially relying on the fact that grant of bail is dependent on the applicants entering appearance to proceed for their trial or hearing. In the case of ***Edward Kambuga vs Republic (1990) TLR 84*** discussing this issue it was stated that " *while we agree that foreigners should not be treated differently in our courts merely because they are foreigners, we think the High Court was entitled to take into account past experience when deciding finally whether or not to grant bail*". This shows the importance of the Court to use its discretion to adjudge this and therefore warn itself while not treating the foreigner differently but consider past experience on availability of the applicant/accused to determine whether or not to grant bail.

The other case is that of ***HSu Chin Tai and Others vs. Republic***, where the Court denied bail taking into consideration the seriousness of the offence and the fact that the applicants were foreigners and without fixed abode. This being the position this Court proceeded to consider previous experience and also whether or not the

1st applicant has averred anything related to having a fixed abode. With regard to previous experience, we have been informed by the applicants and the respondents that what they are charged presently are the first charges against them and that there is no record that the applicants had previously jumped bail. On the second issue of a fixed abode unfortunately nothing has been advanced by the applicants in evidence except to oral submissions by their counsel relating to this but nothing in the affidavit supporting the application or any other document.

But despite this, the Court has considered as amplified by counsels for the applicants and the respondents, bail is a right of an accused person. Case law informs us that the object of bail is to secure the appearance of the accused person at his trial. Building on the Court finding and satisfaction that this Court has jurisdiction and having regard to the fact that all the offences facing the accused person are bailable offences. Also considering the fact that the Respondent Republic have not objected to the bail application and in the interest of justice, we thus hold that the application is granted and the applicants are admitted to bail.

From these authorities it can be concluded that, the law of bail as applicable in our jurisdiction does neither authorizes nor permits any discrimination between a Tanzanian national and a non-Tanzanian. What is permissible is that, considering the past experiences, seriousness of the offence and the severity of sentence if the applicant is convicted, the court can withhold bail or impose different conditions which are necessary to ensure that the accused will be available for facing trial. Thus, it cannot be said that an

accused will not be granted bail because he is a foreign national as that would certainly amount to discriminatory treatment against non-nationals.

Reverting to the facts of the instant case, the offence against which the applicants are charged is not only serious but attracts severe sentences in the event of conviction. As the charge sheet would reveal, Ally Anguzuu Sharif who appears as the 1st accused in the charge sheet faces several counts which are all serious and attract severe punishment on conviction. It is to be noted that, in addition to counts on leading organized crime contrary to sections 4(1), 57(1) and 60 (2) of EOCCA and intentionally organizing, buying, accepting, transporting and possessing government trophies and unlawful dealing in government trophies to wit, 660 pieces of elephant tusks contrary to section 80(1) and 84(1) and Part I of the First Schedule to the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14(b) of the First Schedule to the Act and section 57(1) and 60 (2) of EOCCA, Ally Anguzuu Sharif is charged under section 86(1)(2)(b) and Part I of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14(d) of the of the First Schedule to the Act and section 57(1) of EOCCA.

According to section 60(2) of EOCCA, if the applicants are convicted for the economic crimes against which they stand charge, they will be liable to imprisonment for a term of 20 to 30 years and other penal measure provided for under the Act. Imprisonment for a similar term of 20 to 30 years awaits persons convicted of offences under the Wildlife Act involving trophies listed under Part I of the First Schedule to the Act if the value of the trophy so

involved exceeds Tshs 100,000/= (see section 86(2)). In the instance case, the value of the trophies as started earlier is above Tshs 4,000,000,000/-. Under the circumstances, the risk of escaping justice is not farfetched.

Regarding the previous experience, apart from alerting the court that the applicant is a foreigner, we were told by the Applicant's counsel and the learned States Attorney that, this applicant as with the rest of the applicant has neither a criminal record nor a record that he has previously jumped bail which would inhibit his admission on bail. The applicant's fixed residence in Tanzania and Dar es Salaam in particular, was neither deponed in the affidavit nor was it raised in the course of submission thus we are unable to make a specific finding.

Having considered all these factors and with due regard to the fact that bail is fundamental basic right and an integral party of criminal justice, I will allow the 5th applicant's application on condition that, in addition to other conditions imposed hereunder, he provides proof that he has a fixed abode in Dar es Salaam.

That said, I answer the first part of the question in affirmative, in respect of all the applicants and hereby grant their applications and order that they be released on bail pending determination of Economic Crime Case No. 62 of 2018 currently pending before the Court of the Resident Magistrate for Dar es Salaam at Kisutu upon fulfilment of the following conditions by each of them:

1. Guided by the principle of sharing, there being eleven accused persons in the charges facing the applicants in Economic Crimes Case No. 62 of 2018 before the Court of the Resident Magistrate's Court for Dar es Salaam Rat Kisutu, each of the applicants, that is, **KHALFAN HUSSEIN KAENGELE, ISMAIL MALILO KASSA, ABAS HASSAN @ JABU, KASSIM HASSAN SAID @ BEDUI, ALLY ANGUZUU SHARIF, VICTOR SERAPHIN MAWALLA, PETER THOMAS NYACHIWA, JOHN CHARLES BUHANZA** and **HARUNA BDALLAH KASSA**, shall deposit Tshs. 207,743,000/- (which is Tshs 4,570,347,751/= $\times 1/2$ divided by 11). **ALTERNATIVELY**, each shall deposit a Title Deed of an immovable property of the value not less than Tshs 207,743,000/- The immovable property shall be within Dar es Salaam and shall be free from any encumbrance. The other sum of Tshs 207,743,000/- will be executed by signing a bond;
2. Each applicant must produce two reliable sureties and each surety shall sign a bail bond in the sum of 20,000,000/= The sureties must be resident within Dar es Salaam with recognized place of abode and must have National ID and a letter of introduction from their local authorities;
3. The applicants will not leave the jurisdiction of this court without first obtaining permission from the Resident Magistrate in Charge of the Court of the Resident Magistrate for Dar es Salaam at Kisutu;

4. Each applicant is to surrender his passport and other travel documents to the Resident Magistrate in Charge of the Court of the Resident Magistrate for Dar es Salaam at Kisutu;
5. The applicants shall report to report to the RCO Dar es Salaam at a schedule to be provided by the RCO Dar es Salaam and shall continue to attend to his case on the date and time scheduled;
6. The 5th Applicant, Ally Anguzuu Sharif, shall in addition, provide proof that he has a fixed residence in Dar es Salaam;
7. Verification of the sureties and bond documents shall be executed by the Resident Magistrate in Charge of the Court of the Resident Magistrate for Dar es Salaam at Kisutu.

Order accordingly.

DATED at DAR ES SALAAM this 8th day of October 2021

08/10/2021

X 

Signed by: J.L.MASABO

J.L. MASABO
JUDGE