

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

AT DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO. 130 OF 2021

(Originating from Economic Crime Case No. 48 of 2020 of the Resident Magistrates' Court of Dar es Salaam at Kisutu)

POISON LUSASI BATISHA **APPLICANT**

VERSUS

THE REPUBLIC **RESPONDENT**

RULING

Date of last Order: 02/08/2021

Date of Ruling: 04/08/2021

Itemba, J.

This is an application for bail pending Trial made under S.29(4) and 36(1) of The Economic and Organised Crime Control Act, Cap 200 R.E. 2019, herein Cap 200. It is filed under Certificate of Urgency.

Brief facts which led to this application are that, one Poison Lusasi Batisha herein the applicant, stand charged with Economic Crime Case No. 48 of 2020 before the Resident Magistrate Court of Dar es Salaam Kisutu. He is facing two counts namely; Fraudulent Evasion of Tax contrary to section 84(1)(d) and 3(b)(ii) of Tax Administration Act No. 10/2015 and

Occasioning Loss to a Specified Authority contrary to paragraph 10(1) of the First schedule to, and Section 57(1) and Section 60(2) of Cap 200.

It is alleged that between January 2012 and May 2020 the applicant, the owner of 'electronics' business, fraudulently evaded to pay Value Added Tax worth Tanzanian Shillings Three Billion Ten Million Ninety-Two Thousand Four Hundred and Sixteen (3,010,092,416/=). It is further alleged that through the said tax evasion, the applicant has caused Tanzania Revenue Authority (TRA), to suffer a pecuniary loss of the said amount Tshs. 3,010,092,416/=.

At the hearing of this application the applicant was represented by Mr. Alex Enock learned Counsel while Ms. Elizabeth Mkunde, learned Senior State Attorney appeared for the respondent.

Submitting for the applicant Mr. Enock adopted his affidavit and prayed for the applicant to be granted bail as per the Chamber Summons. He explained to the Court that based on the value of money which the applicant is charged with the Resident Magistrate's Court of Dar es salaam at Kisutu do not have jurisdiction.

Mr. Enock informed the Court that the applicant is a Tanzanian citizen, has reliable sureties and ready to abide to bail conditions. He added that the applicant neither has criminal nor conviction record.

Ms. Mkunde, did not object the application. She submitted that based on the value of the actual money which the applicant is charged with, this Court has jurisdiction as per S.29(4)(d) of Cap 200. She added that the

court has discretion whether to grant bail or not and that should the court decide to grant bail to the applicant, it should rely on S.36(5) of Cap 200 in setting bail conditions.

Mr. Enock was prompted by the court to explain the relevancy of paragraph 5 of his affidavit. He prayed for the court to expunge it as contains evidence which relates to the main case and not this application.

I have considered the applicant's affidavit supporting the application, submissions by both parties and the fact that the offences which the applicant is charged with are bailable.

The value of Tshs. 3,010,092,416/= exceeds the threshold of Tshs. 10,000,000/= as provided for under section 29(4)(d) of Cap 200, therefore, this court has jurisdiction to hear and determine this application. I have also considered the fact that this application has not been objected by the respondent. Under these circumstances, I find it appropriate to allow the application.

Abiding to the mandatory provisions of section 36(5) and (6) of Cap 200, the application for bail is hereby granted. The applicant is admitted to bail upon fulfilling the following conditions:

1. The applicant to deposit in court, cash amounting to half of Tanzanian Shillings Three Billion Ten Million Ninety Two Thousand Four Hundred and Sixteen (3,010,092,416/=) or property/properties equivalent to half value of the said amount and the rest of the amount to be secured by execution of bond in writing.

2. The applicant has to provide three (3) sureties who are to execute a bond of Tanzanian Shillings Five Hundred and Two Million. (**Tshs. 502,000,000/=**) 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 residence within Dar es salaam Region.
3. The applicant should not leave jurisdiction of the Court without prior permission from the Resident Magistrates Court of Dar es Salaam at Kisutu.
4. The applicant shall continue to attend his case on a date and time scheduled.
5. Verification of sureties and bond documents to be executed by the Resident Magistrate, in Resident Magistrates Court of Dar es Salaam Region at Kisutu.
6. The applicant should surrender his passports and any other travelling documents (if any), to the Resident Magistrate, Resident Magistrate's Court of Dar es Salaam Region at Kisutu.

It is so ordered.

DATED at DAR ES SALAAM this 4th day of August, 2021.



A handwritten signature in blue ink, appearing to read "L. J. Itemba".

L. J. Itemba

JUDGE

04/08/2021

Ruling delivered at Dar es Salaam this 04th day of August, 2021 in the presence the applicant in person, Mr. Alex Enock learned Advocate for the Applicant also holding brief for Ms. Elizabeth Mkunde Senior State Attorney for the Respondent and Ms. Tupokigwe Court Clerk.

Right of appeal explained.



A handwritten signature in blue ink, identical to the one above.

L. J. Itemba

JUDGE

04/08/2021