

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

AT DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO. 131 OF 2021

(Originating from Economic Crime Case No. 128 of 2019 in the Resident
Magistrate's Court of Dar es Salaam at Kisutu)

JUMA MOHAMED ZAAR **1st APPLICANT**

STEPHEN NATHANIEL MTUI **2nd APPLICANT**

VERSUS

THE REPUBLIC **RESPONDENT**

RULING

Date of last order 20/07/2021

Date of Ruling: 28/07/2021

Itemba, J

The applicants Juma Mohamed Zaar and Stephen Nathaniel Mtui stand charged with 11 counts of **Forgery** Contrary to Section 333, 335(a), 337 of the Penal Code (Cap. 16 R.E 2002), 1 count of **Stealing by servant** Contrary to Section 258(1)(2)(a) and 271 of the Penal Code (Cap. 16 R.E 2002) and 1 count of **Occasioning Loss to Specified Authority** Contrary to Paragraph 10(1) of the First Schedule to and Section 57(1) and Section 60(2) of the Economic and Organized Crime Control Act (Cap 200 RE 2002)

as amended, herein Cap 200, in the Resident Magistrate's Court of Dar es Salaam at Kisutu.

In the first 11 counts of forgery, it is alleged that on diverse dates between 2014 and 2015, at JEFAG Inland Container Depot within the City and Region of Dar es Salaam with intent to defraud; the applicant, made 11 different receipts of different values purporting to show that 11 different companies have paid wharfage to Tanzania Port Authority, through CRDB Bank, while in fact it was not true.

The applicants, being employees and servants of Tanzania Port Authority herein TPA, are also charged with stealing a sum of Tanzanian Shillings One Billion Five Hundred Thirty Four Million Two Hundred Twenty Six Thousands Four Hundred Twenty Four and Twenty Eight Cents (Tshs. 1,534,226,424.28) the property of their employer, Tanzania Port Authority.

In the last count the applicants are charged with causing Tanzania Port Authority to suffer pecuniary loss of Tshs. 1,534,226,424.28/=.

Under the Certificate of Urgency and by way of chamber summons the applicants are moving this court to grant them bail in accordance with section 29(4)(d) and 36(1) of Cap. 200. Their application is supported by the affidavit of advocate Steven Bwana.

At the hearing, the applicants were represented by two learned advocates, namely Mr. Steven Bwana and Mr. Methusela Mafwele. On the adversary side, the respondent was represented by Ms. Jennifer Masue learned Senior State Attorney.

Mr. Bwana adopted the applicant's affidavit. He prayed for the applicants to be granted bail. He informed the Court that the applicants have reliable sureties who have a place of abode in Dar es Salaam and who can execute bond and secure their presence when needed in Court.

The application was not contested by the respondent. Ms. Masue submitted that the offences against the applicants are bailable under section 29(4) (d) of Cap 200. She urged the court to be guided by section 36(5)(a) of the same Act, in consideration of bail against the applicant.

I have considered the applicants' the chamber summons and affidavit herein together with parties' submissions. It is undisputed that the offences which the applicants are charged with are bailable and this court has jurisdiction to grant the same. The application is not challenged and there is nothing established to prevent the applicants from being admitted to bail. I find it just and appropriate to allow the application as bail is the constitutional right.

Being guided by mandatory provisions of sections 36(5) and (6) of Cap. 200, I grant the application and admit the applicants to bail subject to the following conditions:

1. Applicants are to deposit in Court; cash amounting to half of Tanzanian Shillings One Billion Five Hundred Thirty Four Million Two Hundred Twenty Six Thousands Four Hundred Twenty Four and Twenty Eight Cents (**Tshs. 1,534,226,424.28/=**) 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. The principle of sharing to apply.

2. Each applicant has to provide two reliable sureties who are to execute a bond of Tanzanian Shillings One Hundred and Ninety Million (**Tshs. 190,000,000/=**) 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. 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 his/her prescribed schedule.
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 applicants are 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 28th day of July 2021.



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

L. J. Itemba

JUDGE

28/07/2021