

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

**AT DAR ES SALAAM**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 133 OF 2021**

(Originating from Eco Case No. 130/2019 at Kisutu)

**MERINA ELIA CHAWALA ..... 1<sup>ST</sup> APPLICANT**

**HAPPYGOD NAFTAL ULOMI ..... 2<sup>ND</sup> APPLICANT**

**STEPHEN NATHANIEL MTUI ..... 3<sup>RD</sup> APPLICANT**

*VERSUS*

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

**RULING**

*Date of last order 19/07/2021*

*Date of Ruling: 23/07/2021*

**L. J. Itemba, J**

This is an application for bail made under sections 29(4) (d) and 36(1) of the Economic and Organized Crime Control Act, Cap 200 R.E 2019, filed by MERINA ELIA CHAWALA and STEPHEN NATHANAEL MTUI, the 1<sup>st</sup> and 3<sup>rd</sup> applicants herein.

The application is filed under a certificate of urgency and it is supported by an affidavit of advocate Methuselah Boaz Mafwele.

Annexed to the affidavit is a charge against the 1<sup>st</sup> and the 3<sup>rd</sup> applicants. One HAPPYGOD NAFTAL ULOMI is charged together with the applicants but s/he is not among the applicants in this application.

The applicants stand charged in the Resident Magistrates Court of Dar es salaam at Kisutu in Economic Crimes Case **No. 130 of 2019**. In the 1<sup>st</sup> to 12<sup>th</sup> counts they are charged with the offence forgery contrary to section 333,335(a) and 337, in the 13<sup>th</sup> count they are charged with the offence of stealing by servant contrary to section 258(1)(2)(a) and 271 both counts of the Penal Code [Cap 16 R.E 2002]. In the 15<sup>th</sup> count they are charged with the offence 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 R.E 2002.

In respect of the offences of forgery, it is alleged that on diverse dates in the year 2014 and 2015, the 1<sup>st</sup> and 3<sup>rd</sup> applicants with intent to defraud made receipts to show that different companies had paid wharfage to Tanzania Ports Authority (TPA) while in fact it was not true.

In the 15<sup>th</sup> count, it's particulars reveal that on diverse dates between July 2014 and April 2015 at AMI Inland Containers Deport within the City and Region of Dar es salaam by willful act, the applicants caused TPA to suffer a pecuniary loss of Tanzanian Shillings Five Billion Eight Thirty-Nine Million Four Hundred Thirty-Five Thousand Four Hundred and Twelve and two Cents. **[Tshs. 5,839,435,412.02]**

At the hearing of this application, both applicants were present in Court and they were represented by Mr. Methusela Mafwela and Mr.

Steven Bwana learned advocates and the Republic respondent was represented by Mr. Genes Tesha learned Senior State Attorney.

Mr. Mafwela adopted the applicants' affidavit and prayed that this Court should grant bail to the 1<sup>st</sup> and 3<sup>rd</sup> applicants. He submitted that the applicants live in Dar es salaam and have reliable sureties who are ready to execute bond and who can secure the applicants' presence before the Court. He stated further that it is in the interest of justice that his prayers be granted because the applicants are presumed innocent until proved guilty.

It was Mr. Mafwele's submission that the Court should consider the value against each applicant in the chargesheet because in this case, the 1<sup>st</sup> applicant has 11 counts with a total value of more than twenty-nine million Tanzanian shillings while the 3<sup>rd</sup> applicant has only 2 counts with a value of Tshs.2,604,003/= and Tshs. 2,449,767/=. He also noted that the 15<sup>th</sup> count has a total value of **Tshs. 5,839,435,412.02/=** and it is against both applicants.

For the respondent, Mr. Tesha did not have any objections to this application. However, he prayed that if the application is granted, the Court should consider sections 29(4)(d) and 36(5)(a) of Cap 200.

As regard to Mr. Mafwele's submission that the Court should consider each applicant depending on the number of counts against them and its value in the chargesheet, Mr. Tesha argued that there is only one chargesheet before the Court with different (15) counts and that the total value in the charge is in respect of those 15 counts. That, the applicants are alleged to have caused the Government a total loss of **Tshs. 5,839,435,412.02** and in bail consideration, a chargesheet and its value

are considered in its totality and not against individual applicant. He ended his submission by stating that a total of the said 15 counts has led to the amount of loss to reach **Tshs. 5,839,435,412.02** and that is why section 29(1)(d) of Cap 200 becomes relevant in this application.

The applicants did not have a rejoinder.

In deliberation of this application, I will start with an issue raised by Mr. Mafwele, counsel for the applicants, that the chargesheet contain 15 counts with a value of over Tshs. 5 billion but the 1<sup>st</sup> and 2<sup>nd</sup> applicants are charged with an amount which is way less than Tshs. 5 billion and that, should the application be allowed, the value aspect need to be considered.

Section 29 (4)(d) of Cap 200 states that:

*"After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused his right if he wishes, to petition for bail and for the purposes of this section the power to hear bail applications and grant bail- in all cases where **the value of any property involved in the offence charged is ten million shillings or more** at any stage before commencement of the trial before the Court is hereby vested in the High Court."*

The above section is clear that the Court should consider the value of any property involved the offence which the applicant is 'charged with'. In this application as mentioned above, both applicants are charged with the offences of forgery, stealing there is also an offence of Occasioning Loss to Specified Authority amounting to **Tshs. 5,839,435,412.02** which

is against the same applicants. I agree with the learned Senior State Attorney that the charge against the applicants should be considered in its totality and not just by picking some of the counts therein. Therefore, in consideration of bail against the applicants, the amount which the applicants are charged with is **Tshs. 5,839,435,412.02.**

Having gone through the pleadings and parties' submissions, there is no dispute that the offences which the applicants are charged with are eligible for bail and the value of the property involved in the offence is above the threshold of Tshs. 10,000,000 as provided by section 29(4)(d) of Cap 200, therefore this Court has jurisdiction. The applicants' counsel has assured the Court that the applicants have reliable sureties to meet the bail conditions. Likewise, the application is unopposed by the respondent.

Under the circumstances outlined above, the application for bail is hereby granted and the 1<sup>st</sup> and 3<sup>rd</sup> applicants are admitted to bail upon fulfilling the following conditions:

1. Applicants are to deposit in Court cash amounting to half of Tanzanian shillings Five Billion Eight Hundred Thirty Nine Million Four Hundred Thirty Five Thousand Four Hundred And Twelve And Two Cents (**Tshs. 5,839,435,412.02/=**) in alternative; the applicants are to deposit title deed(s) or any other recognized evidence of ownership of immovable property/ properties equivalent to half value of (**Tshs. 5,839,435,412.02/=**). The other half will be executed by signing a bond. The principle of sharing to apply among the 3 accused persons as per the chargesheet;

2. Each applicant has to provide two reliable sureties who are to execute a bond of Tanzanian shillings Four Hundred and Ninety million (**Tshs. 490,000,000**) 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 shall continue to attend their case on a date and time scheduled;
5. The applicants are to surrender their passports and any other travelling documents (if any) to the Deputy Registrar;
6. The Deputy Registrar shall verify the sureties and all bail related documents before the applicants are released on bail.

It is so ordered.

Dated at DAR ES SALAAM this 23<sup>rd</sup> day of July 2021.



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

L. J ITEMBA

**JUDGE**

23/07/2021