

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

**AT DAR ES SALAAM**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 123 OF 2021**

(Originating from Economic Crimes Case No. 28 of 2021 in the Resident  
Magistrates' Court of Dar es Salaam at Kisutu)

**BADRU BARIKIA AMRANI** ..... **APPLICANT**

*VERSUS*

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

**RULING**

*Date of last Order: 14/07/2021*

*Date of Ruling: 26/07/2021*

**L. J. Itemba, J.**

The applicant, Badru Barikia Amrani filed this application for bail under section 29(4)(d) of the Economic and Organised Crime Control Act (Cap. 200 R.E 2019) and section 2(1) of the Judicature and Application of Laws Act Cap. 358 R.E 2019). The application is brought under a certificate of urgency.

In support of the application is the affidavit of Gabriel Antony Kagaruki, advocate for the applicant.

Briefly, the facts leading to this application are that on 5<sup>th</sup> July 2021 the applicant was charged in the Resident Magistrate's Court of Dar es salaam at Kisutu in Economic Crimes Case No. 28 of 2021. The applicant is charged with two counts of forgery, one count of unauthorized possession of minerals and one count of obtaining money by false pretence.

In the counts of forgery, it is alleged that on 6<sup>th</sup> December 2019 the applicant made a false document namely chemical laboratory report purporting to show that AFRICAN MINERALS AND GEOSCIENCES CENTRE issued the said report to BARIMAT INTERNATIONAL MINING COMPANY LIMITED, a fact he knew to be false.

It is also alleged that on 16<sup>th</sup> December 2020 the applicant made a false document purporting to show that BARIMAT INTERNATIONAL MINING COMPANY LIMITED has contracted to supply 1,000 tonnes of copper metal to BTC GENERAL TRADING FZE COMPANY LTD, for a price of USD 245 per ton, the fact he knew to be false.

In the offence of obtaining money by false pretence, it is alleged that the applicant being the owner of BARIMAT INTERNATIONAL MINING COMPANY LIMITED obtained from Kerim Mankeyev, the director of BTC GENERAL TRADING FZE COMPANY LTD, money amounting to USD 155,605 pretending that he would supply 1000 tonnes of copper minerals, the fact he knew to be false.

In the last count, the applicant is charged with unauthorized possession of a number of 15 different minerals valued at USD 249.24, while he is not a licensed holder.

When the application was called for hearing the applicant was represented by Mr. Robert Rutaihwa assisted by Mr. Gabriel Kagaruki learned counsels, while Mr. Genes Tesha, learned Senior State Attorney, appeared for the respondent.

Mr. Rutaihwa adopted the applicant's affidavit and prayed for the Court to grant bail to the applicant as the offences he is charged with are bailable and the Court has jurisdiction. He added that, the applicant has a permanent address in Dar es salaam and is ready to meet bail conditions. He also prayed for the Court to set favorable bail conditions.

For the respondent, Mr. Tesha did not have any objections to the application. He prayed that the Court should be guided by the mandatory section 35(5)(a) of Cap 200.

The law under section 36(5)(a) of Cap 200 states that;

*"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;"* emphasis supplied.

Having gone through the pleadings and parties' submissions, it is common ground that the counts which the applicant is charged with are

eligible for bail and this Court has jurisdiction. The respondent republic did not have any objection to the application. Therefore, I find no reason established not to grant bail to the applicant.

However, in bail consideration, the value of money or property involved is crucial. I have noted that the values appearing in the charge sheet are in United States Dollar, that is in the 3<sup>rd</sup> count, USD 155,605 and in the 4<sup>th</sup> count, USD 240.24 which makes a total of USD 155,845.24. Either, the chargesheet does not state the equivalent of the said amount in Tanzanian currency.

Being guided by section 36(5)(a) of Cap 200 above which is crafted in Tanzanian shillings, it important to first establish the amount in Tanzanian currency.

In order to reconcile the issue of currency, parties were summoned to address the Court on that aspect. Mr. Rutaiwa learned counsel, representing the applicant was of the opinion that as there is inconsistency between the two values, the amount in USD should be converted based on the rates issued by the Bank of Tanzania. That, the exchange rates should be according to the date when the bail conditions are set because it is not certain as to when the offence was committed. On the other hand, Ms. Masue learned Senior State Attorney who appeared for the respondent submitted that the value should be converted based on the exchange rate of the day when the offences were committed; that is for the 3<sup>rd</sup> count the date is between 23<sup>rd</sup> November and 21<sup>st</sup> December 2020 and for the 4<sup>th</sup> count the date is 23<sup>rd</sup> March 2021.

I tend to agree with the respondent that the appropriate and most relevant amount will be that of the dates which the offences are alleged to have been committed. However, in the chargesheet there are various dates ranging from 23<sup>rd</sup> November 2020 to 23<sup>rd</sup> March 2021 and exchange rates vary on daily basis. For purposes of consistency, I will rely on the latest date which the offence was committed that is 23<sup>rd</sup> March 2021. Based on the Bank of Tanzania Indicative rates issued on 23<sup>rd</sup> March 2021, each USD was exchanged at Tsh.2309.99. See also [Bank of Tanzania \(bot.go.tz\)](http://bot.go.tz)

Henceforth, based on the said exchange rate, a total of USD 155,845.24 which the applicant is charged with, when converted, leads to an amount of Three Hundred and Sixty Million Nine Hundred and Forty Five and Ninety Five Cents. **Tshs. 360,000,945.95**

Therefore, in consideration for Bail the amount of actual money involved is Tanzanian shillings Three Hundred and Sixty Million Nine Hundred and Forty-Five and Ninety Five Cents **Tshs. 360,000,945.95/=**

That said, the application for bail is granted and the applicant will be admitted to bail upon fulfilling the following conditions: -

1. The applicant is to deposit in Court cash amounting to half of Tanzanian shillings Three Hundred and Sixty Million Nine Hundred and Forty-Five and Ninety Five Cents **Tshs. 360,000,945.95/=** or the property/ properties equivalent to half value of the said amount and the rest of the amount be secured by execution of bonds in writing.

2. The applicant has to provide two reliable sureties who are to execute a bond of Tanzanian shillings Ninety Million (Tshs. 90,000,000/=) 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 the jurisdiction of the court without prior permission from the Resident Magistrates Court of Dar es Salaam Region at Kisutu.
4. The applicant is 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, at Resident Magistrates Court of Dar es Salaam Region at Kisutu.
6. The applicant is to surrender his passports and any other travelling documents (if any) to the Resident Magistrate, in Resident Magistrates Court of Dar es Salaam Region at Kisutu.

It is so ordered.

DATED at DAR ES SALAAM this 26<sup>th</sup> day of July, 2021.



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

L. J. Itemba

**JUDGE**

26/7/2021