

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MBEYA DISTRICT REGISTRY)

AT MBEYA

MISCELLANEOUS ECONOMIC CAUSE NO. 76 of 2021

(Arising from Economic Crimes Case No. 08 of 2020 pending in the District Court
of Mbarali at Rujewa)

MATONGO LUVANGA SONGOI.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

Date of Last Order: 25.10.2021

Date of Ruling: 27.10.2021

Ebrahim, J:

The applicant herein has lodged the instant application praying to be granted bail following his arraignment at the District Court of Mbarali. The applicant is charged with other two co-accused persons for the offence of unlawful possession of Government Trophy contrary to **section 86(1)(2)(c)(iii) of the Wildlife Conservation Act No.5 of 2009 as amended read together with paragraph 14(d) of the 1st Schedule and section 57(1) and 60(2) and (3) of Economic and Organized**

Crime Control Act, Cap 200 RE 2019. It is alleged by prosecution that the applicant and other two co-accused persons, on 02.06.2021 were unlawfully found in possession of Government Trophy to wit two elephant tusks valued at USD 15,000/= equivalent to Tshs.34,785,000/-, the property of Tanzania Government.

The application is made under **Section 29(4) (d) and 36(1) of the Economic and Organised Crimes Control Act, Cap. 200 R.E 2002 (the Act) as amended by Act No. 3 of 2016;** and it is supported by an affidavit of Matongo Luvanga Songoi, the applicant.

At the hearing of this application, the applicant was represented by advocate Mwasige Kajanja while the respondent was represented by Mr. Kihaka, learned Senior State Attorney.

Advocate Kajanja stated that the value of the subject matter is Tshs. 34,785,000/- which the District Court is ousted with jurisdiction to issue bail. Praying for the application to be granted, she stated that the applicant is a Tanzanian living at Mbarali with reliable sureties and ready to fulfil the conditions set by the court.

Mr. Kihaka did not oppose the application. He however urged the court to consider the bail conditions set under **section 36(5) (a) to (d) and (6) of the EOCCA Cap 200 RE 2019.**

Indeed, bail is a mechanism designed to ensure that a person who is subject to the strictures of the law stays out of confinement and his freedom is guaranteed while the process of inquiry into his/her liability in the criminal process is being investigated and determined. The institution of bail therefore, falls on the positive side of the principle of presumption of innocence illustrated in the case of **The DPP vs Bashir Waziri and Another**, Criminal Appeal No. 168/2012 and **Article 13(6)(b) of the Constitution of the united Republic of Tanzania** (as amended).

Under **Section 29(4) (d) of the EOCCA, CAP 200 RE 2019** the jurisdiction to hear bail application is vested in this court. Further **Section 36(1) of the Act**, gives this Court mandate either on its own motion or upon application subject to other provisions of the Act to admit an accused person to bail. **Section 36 (5) and (6) of the same Act** provides for bail conditions where the court decides to admit an accused person to bail.

The offence that the applicant is charged with is bailable. At para 6,7 and 8 of the applicant's affidavit, the applicant averred that he is reliable, traceable with reliable sureties who have fixed places of abode with movable and immovable properties within Tanzania. He stated also that he is ready to abide to the bail conditions set by this court and his release on bail would not impede the investigation process.

That being the position and pursuant to the above provisions of the law; I proceed to grant bail to the applicant under the following conditions;

- (1) That the applicant shall deposit in court a cash sum of Tshs. 5,800,000/- (say Tanzanian Shillings Five Million Eight Hundred Thousand) only **Or** in the alternative shall deposit to the custody of the court, a Title Deed/Residence Licence of the immovable property to the equivalent amount.
- (2) That the applicant shall be required to provide two reliable sureties who shall be required to execute a bond of TZS. 2,500,000/- each (say Tanzania Shillings Two Million Five Hundred Thousand) only.

- (3) Those sureties shall ensure the applicant's attendance to court.
- (4) The applicant shall immediately surrender his passport or any travelling document in his name to the Deputy Registrar.
- (5) That the applicant shall be duty bound to appear in Court on all dates that shall be scheduled by the Court in Economic Crimes Case No. 08 of 2021 pending at Mbarali District at Rujewa.
- (6) That, the applicant shall report to the District Magistrate In-Charge at Mbarali District Court on every first Monday of the month.
- (7) That, the applicant is hereby restricted to move outside the jurisdiction of this Court (High Court) without prior permission of the District Magistrate In-Charge at Mbarali District Court.
- (8) Bail conditions to be ascertained/ verified by the Deputy Registrar as soon as practicable after the issuance of this order.

Accordingly ordered.



R.A. Ebrahim

Judge

Mbeya

27.10.2021