

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM REGISTRY)

AT DAR ES SALAAM

MISC. ECONOMIC CAUSE NO. 243 OF 2021

ABDALA MOHAMED NGALANGA.....1ST APPLICANT

YAHAYA MOHAMED LUKUMBI.....2ND APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

*(Arising from Economic Crime Case No. 7 of 2017, at the Resident
Magistrate's Court of Dar es Salaam at Kisutu)*

*Date of last order: 17/11/2021
Date of Ruling: 17/11/2021*

RULING

LALTAIKA, J.

The applicants **ABDALA MOHAMED NGALANGA** and **YAHAYA MOHAMED LUKUMBI** are moving this court for bail consideration pending trial at the Resident Magistrate's Court of Dar es Salaam at Kisutu, in Economic case No.7 of 2017. The applicants are charged with a total of three counts to which , on the 1st count the applicants are jointly charged with unlawful possession of Government Trophies to wit six

pieces of elephant tusks valued at USD 30,000 which is equivalent to TZS 66,750,000/=contrary to paragraph 86 (1) (2) (c) (ii) of the Wildlife Conservation Act No.5 of 2009 read together with paragraph 14 the First Schedule to the Act and section 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap 200 R.E. whereas for the second count, the applicants are charged with unlawful dealing in Government trophies contrary to section 80(1) and 84(1) of the Wildlife Conservation Act read together with paragraph 14 of the First Schedule to the Act and section 57(1) and 60(2) of the Economic and Organized Crime Control Act, and for last charge the applicants are charged with leading organised crime contrary to paragraph 14 of the First Schedule to the Act and section 57(1) and 60(2) of the Economic and Organized Crime Control Act.

The applicants preferred this application under section 29(4) of the Economic and Organized Crime Control Act. R.E. 2019, the application is made by way of Chamber Summons and a joint affidavit sworn by the applicants.

Thus, the applicants pray for the following orders to be granted by this court;

1. That this honorable court be pleased to grant bail to the applicants herein in Economic Case No.7 of 2017 which is pending trial at the Resident Magistrate's court of Dar es Salaam at Kisutu.
2. That this honorable court, having granted the prayer in (1) above, be pleased to grant reasonable bail conditions.
3. That this honorable court be pleased to grant any other relief as it deems fit.

When this matter was called up for hearing on the 17th November 2021, the applicants appeared in person to fend this application whereas Ms. Kasana Maziku, senior state attorney appeared for the respondent.

Addressing this court in support of the application, the applicants briefly urged this court to grant them bail on the ground that bail is their right so that they can attend the trial while engaging in his daily activities. The applicants reassured this court that they are faithful not to jump bail.

Responding to the application Ms. Maziku did not object this application, she submitted that the applicants be granted bail upon fulfilment of the conditions stipulated under the EOCCA.

I have dutifully considered the submissions from both parties. I have also gone through the applicants' joint affidavit. This matter being an economic case which the value of the subject matter exceeds ten million shillings, the jurisdiction to grant bail is vested to this court. Nevertheless, in setting bail conditions, this court is bound to comply with provisions of section 36(5). The section provides as quoted below:

(5) 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.

(b) appearance by the accused before the Court on a specified date at a specified time and place

(c) surrender by the accused to the police of his passport or any other travel document

(d) restriction of the movement of the accused to the area of the town, village or other area of his residence.

Likewise in the case of **Abdi s/o Seif Said & Others vs Republic, Misc. Crim.Appl.No.07/2020[2020]** **TZHC459(27March,2020)**

www.tanzlii.org the court in compliance with the above quoted provision of the law in setting bail conditions stated:

"According to the prevailing laws, specifically sections 36 (5) & (6) of the Economic and Organized Crime Control Act (EOCCA,) and 148 (5) (e) of Criminal Procedure Act (CPA), have codified bail conditions. More so, the statute has limited the jurisdiction of courts to admit and determine bail applications.

As pointed out earlier, although this court is vested with the jurisdiction to entertain bail where the property involved exceeds ten million shillings, the court has no choice to impose bail conditions of its own but to comply with the mandatory conditions set out in section 36 (5) of the EOCCA.

I have gone through the charge sheet annexed to this application. It indicates that the applicants are jointly charged in all three counts. Under these circumstances, in imposing the bail conditions, I am inclined to apply the principle of burden sharing of the principal sum for both applicants. See the case of **Silvester Hillu Dawi & Steven Leon Mwambene vs DPP, Criminal Appeal No.250 of 2006 CAT**

From the foregoing explanation I hereby admit the applicants on bail upon fulfilling the following conditions:

1. Each applicant or any other person who is a resident of the city of Dar es Salaam, on their behalf, should submit cash bond at

the sum of Tsh. 16,687,500/= . Alternatively they can submit a title deed(s) carrying the immovable property valued at that sum.

2. Each applicant should bring two sureties who are resident of Dar es Salaam, who will execute a promissory bond of Tshs. 3,000,000/=
3. The applicants to surrender their travel documents to court.
4. The applicants should not leave the jurisdiction of the court without permission from the Resident Magistrate of the Resident Magistrate Court of Dar es Salaam.

The applicants to appear before the Resident Magistrate Court of Dar es Salaam for execution of the bail conditions.



E.I. LALTAIKA

JUDGE

17/11/2021