

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

CONSOLIDATED ECONOMIC APPL. NO. 175 OF 2021

*(Originating from Economic Crime Case No. 51 of 2021 at the Resident Magistrate's
Court of Dar es Salaam at Kisutu before Hon. Isaya, SRM)*

ASHIRAFU SALUM KARWANI ----- 1ST APPLICANT
AMIRI WAZIRI MZEE ----- 2ND APPLICANT

VERSUS

THE REPUBLIC -----RESPONDENT

Date of last Order: 03/09/2021

Date of Ruling: 15/09/2021

R U L I N G

MGONYA, J.

When the two files i.e. **Criminal Application No. 184 of 2021** and **Criminal Application No. 175 of 2021** both originating from **Economic Case No. 51** at Kisutu Resident Magistrate's Court under the same Charge Sheet, I decided to consolidate the two files. The hearing of the same was heard jointly though the same had different Advocates and the same was replied by the same Republic's Counsel, hence this Ruling.

As said above, both Applicants are facing an **Economic Case No. 51 of 2021** at Kisutu Resident Magistrates Court. They are alleged to have occasioned loss to a Specified

Authority Contrary to **Paragraph 10 (1) of the First Schedule, and Section 57(1) and 60 (2) of the Economic and Organized Crime Control Act, Cap. 200 [R.E 2019]**. Another count is stealing contrary to **section 258 (1), (2) (a) and section 265 of the Penal Code Cap. 16 [R.E 2019]**.

The Applicants after being arraigned in court, have preferred this Application for bail in this court under Certificate of Urgency supported by the Affidavits of both **Othman Katuli** and **Melkior Saul Sanga** their Advocates respectively.

Submitting to this court, briefly it was both Counsel's submission that bail as Constitutional Right, need not be difficult to the Applicants to obtain and that the conditions should be practicable and easy to be reached. In support of their assertions, Advocates referred this court to several court decisions and also to ***Misc. Economic Application No. 140 of 2021 of LULU VICTOR KAYOMBO AND LILIAN ONAEL KILEO V. REPUBLIC*** originating from the same **Economic Case No. 51** at Kisumu Resident Magistrate's Court.

In the strength of the cited decisions and the referred Application which was heard and determined before this very same High Court Registry, Advocates for the Applicants prayed this court to grant the Application with considerable conditions.

Upon hearing of the said Application, the Respondent did not object the Application for bail. However, prayed the court

to consider the conditions and the provisions under sections **148 (5) (e)** of the **Criminal Procedure Act, Cap. 20 [R. E. 2019]** and **36 (4) (e)** of **Economic and Organized Crime Control Act, Cap. 200 [R.E. 2019]**, herein to be referred as **EOCCA**.

Further, in response to the Applicants' Counsel submission, the Respondent acknowledged the following set of facts:

That when a specific law provides for a certain procedure parties are to adhere to the specific law, unless such law is silence then the use of a General Law becomes inevitable. Further for the purpose of this Application made under **EOCCA**, grant of bail subject to the monetary value involved in a charge has to be taken into consideration, In support of the this point, Respondent referred the case of ***DIRECTOR OF PUBLIC PROSECUTIONS VS ANETH JOHN MAKAME, Criminal Appeal No. 127 of 2018, CAT at Dar es Salaam.***

On the other hand, the learned State Attorney stated that this Court enjoys discretionary powers to grant or refuse to grant bail as Bail is statutory and for economic cases like this one, bail conditions are provided for under **section 36 (5) and (6) of the Economic and Organized Crime Control Act (EOCCA)**.

The State Attorney was of the view that the above legal conditions are mandatory provision of the Law that this

Honorable Court is bound to apply and it cannot curvature or refuses to apply as it is, unless the same is amended. Hence bail conditions are no longer courts discretion and **that bail condition are not set simply because or depending on the ability by the Applicants to comply with them, but they are fixed by the law to ensure that, the Applicants will appear in court for their trial.**

Therefore it is the Respondent's submission that prayers made by the Applicant cannot be entertained under the court's discretion but rather the court in granting the bail has to reflect the legal conditions.

After going through the Applicants' Affidavit and Charge Sheet attached thereto, together with both Counsel's respective submissions in relation to the instant Application, this Honorable Court is satisfied that the Applicants before the court are eligible for bail as prayed. However, the law has to be observed in granting this kind of Application despite the fact that Bail is one of the basic Constitutional Right. It is from the same, I have to declare that the law governing bail need to be adhered to and indeed the same has been observed in the cause of determining the Applications at hand.

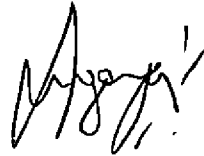
In the event therefore, **this Honorable Court proceeds to grant the prayer sought by releasing the Applicants ASHIRAFU SALUM KARWANI and AMIRI WAZIRI MZEE -**

on bail upon fulfillment of the following legal conditions as per the provisions of the sections **148 (5) (e)** of the **Criminal Procedure Act, Cap. 20 [R. E. 2019]** and **36 (4) (e)** of **Economic and Organized Crime Control Act, Cap. 200 [R.E. 2019]**, respectively as hereunder:

- (i) The Applicants are to deposit into Court a cash sum of Tshs. 20,500,000,000/= (Twenty Billion Five Hundred Million Shillings) or in Alternative, to deposit into a court Title Deed/(s) of immovable property (duly certified by the professional valuer) equivalent to the above mentioned sum;***
- (ii) The Applicants are to surrender their travelling document(s) i.e. passports if any to the nearest Police Station within the Jurisdiction where the charge arose;***
- (iii) The Applicants are hereby ordered to have two reliable sureties; and***
- (iv) Further, the Applicants herein are restricted from travelling and visiting any place outside the Dar es Salaam Region without express written permission of the Court.***

Consequently, the Applications in favor of the above mentioned Applicants are **granted to the extent, terms and conditions stipulated above.**

It is so ordered.

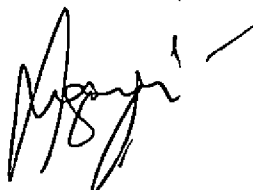


L. E. MGONYA

JUDGE

15/09/2021

Court: Ruling delivered in my chambers in the presence of Mr. Othman Katuli, Advocate for the 1st Applicant and holding brief for Advocate Sanga and Meero for the 2nd Applicant, Stella Majaliwa, State Attorney for the Respondent and Ms. Veronica RMA, this 15th day of September, 2021.



L. E. MGONYA

JUDGE

15/09/2021