

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 98 OF 2021

(C/F the District Court of Karatu at Karatu, Economic Case No. 03 of 2021)

SONGA IRUS LOMA.....1ST APPLICANT

AYUBU LALYO @ JOHN LALYO @ USTADHI.....2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

28/10/2021 & 12/11/2021

ROBERT, J:-

The Applicants, Songa Irus Loma and Ayubu Lalyo @ John Lalyo @ Ustadhi, seek to be admitted on bail pending trial under section 29(4)(d) and section 36(1) of the Economic and Organised Crime Control Act, Cap. 200 (R.E. 2019). The Applicants and four others are charged at the District Court of Karatu in Economic Case No. 3 of 2021 which is currently pending at the District Court of Karatu.

The Applicants are facing two counts of economic offences (first and third counts) out of the three counts charged in the said case. The first count is Leading Organised Crime, Contrary to section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap. 200 R.E

2019 and the third count is unlawful dealing in government trophy, contrary to section 86 (1) and (2) (b) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) both of the Economic and Organized Crime Control Act, Cap. 200 R.E. 2019.

The offence in the third count is equated to the value of two killed elephants which is equivalent to TZS 69,435,000/=. Since the value of money involved exceeds ten million shillings, the Applicants applied for this Court to grant them bail pending trial. The application is supported by an affidavit sworn by Alexander Williams Shillah, learned counsel for the Applicants.

At the hearing of this application the Applicants were represented by Mr. Alexander William Shillah, learned counsel whereas Ms Eunice Makala, learned State Attorney appeared for the Republic.

Highlighting on this application, counsel for the Applicants submitted that, offences facing the Applicants are bailable and this court has jurisdiction to grant bail pending trial. He stated that the Applicants, as accused persons, are presumed innocent under Article 13 (6) (b) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time. He referred the Court to the case of **Tito Douglas Lyimo vs Republic** (1978) LRT 55 and **Patel vs Republic** (1971) HCD

303 where it was held that bail is a right and not a privilege to an accused person. On the basis of the submissions, he prayed for the Applicants to be admitted on bail pending trial.

In her response, the learned counsel for the Respondent submitted that, although the Respondent filed her counter affidavit in this application, the Republic does not wish to resist this application since the offences charged are bailable and the court has jurisdiction to grant the application.

This court is aware, as rightly stated by the learned counsel for the parties, that bail is a right of an accused person. Granting bail is based on the principle of presumption of innocence and the right to freedom of movement which are treasured under Articles 13(6) (b) and 15 of the Constitution.

In the case of **Patel vs Republic**, cited by the counsel for the Applicants, this Court emphasized on the status of the accused person during trial and held as follows:

"...whilst awaiting trial is as of right entitled to bail, as there is presumption of innocence until contrary proved. It is a settled law that the purpose of arrest and putting the accused in custody is to secure his attendance during the trial and to ensure that he is available to receive and serve sentence if convicted."

The primary consideration in granting bail is interest of justice to the accused and the complainant. It follows that if bail is not restricted by the law, its denial needs to be justified. In the case of **Adballah Nassoro vs Republic**, 1 TLR (R) 289 it was held that:

"Whether the granting of the application will be detrimental to interest of justice and good order.... But such detriment must satisfactorily be substantiated by solid reason and not based on vague fears or apprehensions or suspicions. And bail should not be lightly refused."

Given that, the Applicants are charged with economic offences where bail is allowed on conditions prescribed under section 36 (5) of the Economic and Organized Crime Control Act, Cap. 200 (R.E 2019] and the application is not resisted by the Respondents, I find no reason not to allow this application. Accordingly, I admit the Applicants to bail upon complying with the following conditions:


1. The Applicants to surrender their passport or any travelling documents, if any, to this Court.
2. The Applicants to deposit cash or Title deed of a property or property approved to have the value equivalent to half the amount or value of the money or property for which the Applicants are charged, that is 69,435,000/= divided equally between the 2 Applicants. Each Applicant will therefore deposit cash or Title deed

or property approved to have the value equivalent to TZS 17,358,750/=;

3. Each Applicant to produce two reliable sureties each of whom has to execute a bond of Tsh. 8,679,375/=;
4. Each surety should produce an introductory letter from his or her employer or local authorities and a copy of recognized identity card.
5. Each Applicant to appear before the District Court of Karatu whenever Economic case No.3 of 2021 is scheduled by the court to proceed.
6. The Applicants are restricted from moving out of the jurisdiction of Karatu District Court without permission of the District Magistrate In-charge.
7. Verification and scrutiny of the bond documents for sureties and Applicants shall be executed by the Deputy Registrar of the Court.

It is so ordered.




K.N. ROBERT
JUDGE
12/11/2021