

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

MISC. CRIMINAL APPLICATION NO. 238 OF 2021

(Arising from Economic Cause No. 14 of 2021 pending at the Court of the Resident Magistrate for Kibaha at Kibaha)

SGT. ANTHONY LESULEAPPLICANT
VERSUS
THE REPUBLIC.....RESPONDENT

RULING

Ruling 23/12/2021

MASABO, J

The ruling is in respect of an application for bail. The applicant has moved this court by way of a chamber summons made under Section 29(4) (d) and 36(1) of the Economic and Organized Crimes Control Act [Cap 200 RE 2019]. Supporting the application is the applicant’s affidavit through which he depones that, he stands charged before the Court of the Resident Magistrate for Kibaha ta Kibaha for unlawful possession of ammunition to wit, 41 bullets without license contrary to section 21 and 60(1) of the Fire Arms and Ammunition Control Act, 2015 read together with paragraph 31 of the 1st Schedule to and section 57(1) and 60 (2) of the Economic and Organized

Crimes Control Act [Cap 200 RE 2019]. Further, it is deponed that, after being aligned in court, he applied for bail but his application was denied for want of jurisdiction. Hence this application.

During the hearing, Mr. Sura, the learned counsel who represented the applicant passionately argued that the application is within the jurisdiction of this court. Thus, the court be pleased to admit the applicant on bail as the offence against which he is charged is bailable and his admission on bail will not any how prejudice the prosecution. Besides, the applicant is a civil servant and family man hence it is unlikely that he will abscond. Also, he is the sole bread winner for his family thus his continued detainment affects not only his welfare but that of the family. In fortification, he cited the case of **Fred Raphael Ilomov R**, Misc. Economic Application No. 2 of 2016, HC-Economic Crimes Division (unreported)

For the respondent, Ms. Sofa Bimbiga, the learned State Attorney, did not have any objection as to the grant of bail. She was however troubled by the issue of jurisdiction whereby she argued that, the application is outside the realm of the jurisdiction of this court as the charge sheet is silent on the

value of the asset (ammunition) against which the applicant is charged to have been found in unlawful possession. She cited the case of **Suleiman Masoud & Another v R**, Misc. Application No. 10 of 2020, and **Shaib Husein Twalib Mambosafi v R**. Misc. Application No. 13 of 2019 and argued that, in both cases, the court was in agreement that if the charge sheet does not show the value of the asset, the jurisdiction to determine the bail application rests on the committal court and that, if this court was to grant bail in such cases, it may invoke the provision of section 148(3) of the Criminal Procedure Code [Cap 20 RE 2019].

In his brief rejoinder, Mr. Sura insisted that, as per the cited case, the application is within the purview of the jurisdiction of this court. reiterated further that, had it been within the jurisdiction of the committal court it would have been granted but the committal court found the application to be above beyond its jurisdiction.

I have carefully considered the application and the submission for and against the application. For clarity and easy of reference, the contested provision as set out under section 29(4) of the Economic and Organised

Crimes Control Act [Cap 200 RE 2019] provides as follows with regard to bail:

(4) After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purposes of this section the power to hear bail applications and grant bail-

(a) between the arrest and the committal of the accused for trial by the Court, is hereby vested in the district court and the court of a resident magistrate if the value of any property involved in the offence charged is less than ten million shillings;

(b) after committal of the accused for trial but before commencement of the trial before the court, is hereby vested in the High Court;

(c) after the trial has commenced before the Court, is hereby vested in the Court;

(d) in all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court [emphasis added].

While interpreting this provision, the Court of Appeal in **Mwita Joseph Ikohi and 2 others v. R.** Criminal Appeal No.60/ 2018 (unreported), emphatically stated that:

"The essence of the above-quoted subsection is that it vests in different courts the power to hear and determine bail applications under the EOCCA depending on the stage the proceeding concerned has reached as well as the value of the property involved in the offence charged. For a start, section 29 (4) (a) empowers the district court and the court of a resident magistrate to hear and determine bail applications between the arrest and the committal of the accused for trial by the "Court" if the value of any property involved in the offence charged is less than Ten Million Shillings. While in terms of section 29 (4) (b) the granting of bail after committal of the accused for trial but before commencement of the trial before the court is vested in the High Court regardless of the value of the property involved, after commencement of the trial in the "Court", jurisdiction is vested in the "Court" in terms of section 29 (4) (c), again regardless of the value of the property. It should be noted that the word "Court" in terms of section 2 of the EOCCA means the Corruption and Economic Crimes Division of the High Court established under section 3 as amended by section 8 of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016. Of particular interest and relevance in this matter is section 29 (4) (d). It confers on the High Court the jurisdiction to grant bail where the value of any property involved in the offence charged is Ten Million Shillings or more at any stage before commencement of the trial in the Corruption and Economic Crimes Division of the High Court. [emphasis added].

I have carefully read the decision of this court in **Suleiman Masoud Suleiman & Another v The Republic** (Supra) which was supplied to me by the applicant's counsel. In my reading of the case, I have observed that, upon citing the decision of the Court of Appeal in the above cited case, this court stated that, in spite of the precise directive of the Court of Appeal, the issue currently in question has remained unresolved and proceeded to invoke the provision of Article 108 (2) of the Constitution.

I will, respectfully differ with my learned brother. As held elsewhere in a similar case, since the pecuniary value of the assets involved in the offence is a decisive factor in determining the jurisdiction of this court in bail applications involving economic offences and since it is a common ground that, the pecuniary value of the offence facing the applicant in this case is unknown, there is no justification why the committal court declined to consider the application. I am fortified by the decision of this court in **Murugwa Nyamikindo @Sosont v R**, Miscellaneous Criminal Application No. 11 of 2021, HC- Musoma, and **Shaib Husein Twalib @ Mambosafi v R**. Misc. Criminal Application No. 33 of 2019, HC at Songea (unreported) where, the court consistently held that where the pecuniary value is

undisclosed, the jurisdiction to grant bail rests in the district court or the court of a resident magistrate presiding over the committal proceedings.

Fortifying this point, the court in **Murugwa Nyamikindo @Sosont v R** (supra) stated that:

it is a celebrated principle of criminal law that whenever a criminal court entertains doubt, that doubt must be resolved in favour of an accused person. For that reason, the doubt whether the value of property in this case is above or below ten million should have been resolved in favour of the applicant by finding that the value of the property is below ten million Tanzania shillings. I, concur with the State Attorney that where the charge sheet in an economic case does not disclose the value of the property involved, the district court and the court of a resident magistrate have jurisdiction to entertain an application for bail. [the emphasis is mine].

I fully subscribe to this view as holding otherwise would amount to speculating that the value is above ten million hence within the jurisdiction of this court which would be materially wrong and inconsistent with the law against speculation and conjectures, which has held in **Mohamed Musero v. Republic** (1993) TLR 290, have no room in criminal trials.

Having found as above, I would justifiably strike out the application and direct that the applicant be brought before the Court of the Resident Magistrate for Kibaha at Kibaha where he is arraigned so that his application can be determined. I am however hesitant to take this path for three major reasons. **First** as alluded to earlier, the applicant has been custody for a long time and this is not the first time he has applied for bail. He had previously applied for bail in the Court of the Resident Magistrate but his application was struck out for want of jurisdiction hence this application. **Second**, the offence against which the applicant stands charged is bailable and the Republic has neither contested it or availed this court with any material which would inhibit the applicant's admission on bail. And, **third**, bail is basic right enshrined in constitution hence should not be unnecessary denied or delay. The applicants continued detention unjustifiably deprives him of his liberty and is inconsistent with the his right to be presumed innocent which is a fundamental principle of criminal justice. For these reasons I, will invoke the inherent power of this court and admit the applicant on bail on the following conditions:

1. The applicant shall execute a bail bond of Tshs 1,000,000/ and shall continue to attend to his case on the date and time scheduled;

2. The applicant shall have two reliable sureties. Each of the sureties shall execute a bail bond of Tshs. 500,000/=.
3. The sureties must have a fixed abode in Pwani Region. Each of the sureties must have a national identification card or an introduction letter from and of the local leaders of his place of residence.
4. The Resident Magistrate in Charge of the Court of the Resident Magistrate for Kibaha at Kibaha shall verify the sureties and all bail documents before the applicant is released on bail.

Dated at Dar es Salaam this 23rd day of December 2021.

23/12/2021

X



Signed by: J.L.MASABO

J.L. MASABO
JUDGE

