

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

**CONSOLIDATED MISC. CRIMINAL APPLICATION NOS. 275 AND
276 OF 2021**

(Arising from Economic Crime Case No. 77 of 2021 before the Court of the Resident
Magistrate for Dar es Salaam at Kisutu)

- 1. PHILIP SEMU SENGELA**
- 2. ALLY YUSUPH MWINYIMVUA**
- 3. LAURENT KIMALIJA PHILIBERT**
- 4. MOHAMED MUSSA SWALEHE**
- 5. STEPHEN ALLELIO SWAI**

APPLICANTS

VERSUS

REPUBLIC.....RESPONDENT

RULING

Hearing & Ruling: 17/12/2021

MASABO, J.:-

The applicants have moved this court under certificate of urgency through **Misc. Criminal Application No. 275 of 2021** filed by Philip Semu Sengela; Ally Yusuph Mwinyimvua, Laurent Kimalija Philibert and Mohamed Mussa Swalehe **and Misc. Criminal Application No. 276 of 2021** filed By Stephen Allelio Swai. The main prayer in these applications which were both filed under section 29 (4) (d) and 36(1) and (5) of The Economic and Organised Crimes Control Act [Cap 200 R.E 2019] (the EOCCA), is for grant

of bail pending hearing and determination of Economic Crime Case No. 77 of 2021 before the Court of the Resident Magistrate for Dar es Salaam at Kisutu. The copy of the charge sheet appended to both applications show that, the applicants are jointly charged for one count of occasioning loss to specified authority contrary to sections 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap, 200 R.E. 2019) (EOCCA). It is alleged that on diverse dates between 1.7.2019 and 30.11.2021 at the Tanzania Ports Authority (TPA) within Ilala district in Dar es Salaam region, they willfully made false entries into the Billing System thereby causing a loss of Tshs 694,072,463.90 to the TPA. All the applications were by way of a chamber summons supported by affidavit.

Although filed separately, when the parties appeared before me for hearing, Ms. Tuli Helela, the learned State Attorney who appeared for the respondent, notified the court that the two applications emanate from the same criminal case this. Thus, is it proper and convenient that they be consolidated. Considering that, as argued by the learned State Attorney, both applications originate from Economic Crime Case No. 77 of 2021 currently pending in the Court of the Resident Magistrate for Dar es Salaam at Kisutu and since the

main prayer in both applications is for bail pending trial of the said economic case and considering further that the prayer for consolidation was not objected by Mr. Alex Mshumbusi, the counsel for the applicants in Misc. Criminal Application No. 275 of 2021 and Ms. Abriat Kivea who represented the applicant in Misc. Criminal Application No. 276 of 2021, this court has found it proper and convenient to consolidate the two applications and determined them jointly as Consolidated Misc. Criminal Application Nos. 275 and 276 of 2021.

Having consolidated the two applications, Ms. Helela informed the court that the respondent does not contest the application. On his party, Mr. Mshumbusi, counsel for the 1st to 4th applicants, adopted his affidavit filed in support of Misc. Application No. 275 of 2021 and prayed that the applicants be admitted on bail as per the laws of the land. Similarly, Ms. Abriat Kivea, counsel for the 5th Applicant, adopted her affidavit filed in support of Misc. Criminal Application No. 276 of 2021 and proceeded to pray that the 5th applicant be admitted on bail as he has no criminal record and as per the disposition in the affidavit, he is medically unfit.

This being an uncontested application, there are only three brief questions to consider and determine, namely *whether the application is within the jurisdiction of this court; whether the applicants qualify for release on bail* and; if so, *under what condition(s)*. Having examined the applications, the supporting documents and the submission by the counsels, I am fortified that the offence facing the applicants in Economic Crime Case No. 77 of 2021 before the Court of the Resident Magistrate for the Dar es Salaam at Kisutu are bailable but the application for bail could not be determined by the said court because Tshs 692,072,463.90 which is the total pecuniary value involved in the offence against which the applicants are charged, exceeds Tanzania Shillings ten million (Tshs10,000,000/=) which is by virtue of section 29(4) (a) of the EOCCA, a pecuniary bar to the jurisdiction of subordinate courts in similar applications. Therefore, this court has jurisdiction to entertain and determine the application.

Regarding the second question, since the applications were uncontested and we were made to understand that they have no criminal record and no record was presented to show that they have previously jumped bail which would

impend their admission on bail, the second question attracts a positive answer.

As for the 3rd question, section 36(5) of the EOCCA, prescribes mandatory conditions for bail and requires that when granting bail, the court should require the applicant to deposit cash equal to half the amount or value of the property involved or in the alternative, other property equivalent to half the amount or value of the property involved. Thus guided, and having answered the 1st and 2nd questions in the affirmative, I hereby admit all the applicants on bail pending determination of Economic Crime Case No. 77 of 2021 currently pending before the Court of the Resident Magistrate for Dar es Salaam at Kisutu upon fulfilment of the following conditions by each of them:

- 1.** Guided by the principle of sharing, there being five (5) accused persons in the charges facing the applicants in Economic Crimes Case No. 77 of 2021 before the Court of the Resident Magistrate's Court for Dar es Salaam at Kisutu, each of the applicants, that is, **Philip Semu Sengela, Ally Yusuph Mwinyimvua, Laurent Kimalija Philibert; Mohamed Mussa Swalehe and Stephen Allelio Swai**, shall deposit

Tshs. 69,207,246/- (which is Tshs 692,072,463 = x 1/2 divided by 5).

ALTERNATIVELY, each shall deposit a Title Deed of an immovable property of the value not less than Tshs 69,207,246/- The immovable property shall be within Dar es Salaam and shall be free from any encumbrance. The other sum of Tshs 69,207,246/- will be executed by signing a bond;

2. Each applicant must produce two reliable sureties and each surety shall sign a bail bond in the sum of 10,000,000/= The sureties must have a recognized place of abode and must have National ID or a letter of introduction from their local authorities;
3. The applicants will not leave the jurisdiction of this court without first obtaining permission from the Resident Magistrate in Charge of the Court of the Resident Magistrate for Dar es Salaam at Kisutu.
4. Each applicant is to surrender his passport and other travel documents to the Resident Magistrate in Charge of the Court of the Resident Magistrate for Dar es Salaam at Kisutu;
5. The applicants shall continue to attend to his case on the date and time scheduled;

6. Verification of the sureties and bond documents shall be executed by the Resident Magistrate in Charge of the Court of the Resident Magistrate for Dar es Salaam at Kisutu.

DATED at DAR ES SALAAM this 17th day of December 2021.

17/12/2021

X



Signed by: J.L.MASABO

J.L. MASABO
JUDGE

