

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 73 OF 2021

(C/F the RMs' Court of Arusha in Economic Crimes Case No. 13 of 2018)

BARAKA S/O SAINAYARI @ SANE1ST APPLICANT

NATAKAY S/O NDASIKOY @ CHEUSI.....2ND APPLICANT

MEDARD S/O TSOX@ GIDURA.....3RD APPLICANT

VERSUS

THE D.P. P RESPONDENT

RULING

26/8/2021 & 12/11/2021

ROBERT, J:-

The applicants herein seek to be admitted on bail pending trial. The application is brought under section 149 of the Criminal Procedure Act, Cap. 20 (R.E. 2002), sections 29(4)(d) and section 36(1) of the Economic and Organized Crime Control Act, Cap. 200 R.E. 2002 read together with section 10 of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016 and supported a joint affidavit sworn by the applicants.

The applicants are charged with one count of unlawful possession of Government Trophy and one count of Unlawful Dealing in Government Trophies in Economic Crime Case No. 13 of 2018 which is pending at the Resident Magistrate's Court of Arusha.

It is alleged that the applicants were jointly found in possession of one Elephant Tusk and one piece of Elephant Tusk which are equivalent to two killed elephants valued at USD 30,000 which is equivalent to Tanzania shillings sixty seven million, four hundred twenty five thousand (Tshs. 67,425,000/=). The applicants preferred this application in this Court since the trial Court has no jurisdiction to entertain this application.

When this application came up for hearing on 26th August, 2021, the applicants were present in person without representation whereas the respondent was under the services of Mr. Ahmed Khatibu, learned State Attorney.

The applicants prayed to be granted bail since they have been in remand custody for four years now and the 3rd applicant submitted further that he is suffering from diabetes and pressure.

Opposing this application, counsel for the respondent argued that, the applicants had once filed similar application vide Criminal Application No. 49 of 2019 through which the DPP filed a certificate opposing their

application for bail under section 36 (2) (3) of the Economic and Organized Crime Control Act, Cap. 200 R.E 2002. He maintained that, once the said certificate has been issued it remains effective until the proceedings regarding their case are concluded or the DPP decides to withdraw it. Therefore, this court is not empowered to grant bail to the applicants and this application deserves to be dismissed.

In a brief rejoinder, the applicants questioned why the DPP denied their bail while there are other applicants who are granted bail and they are all citizens of Tanzania. Further to that, the said certificate was filed in previous case therefore the court should not be bound by the said certificate in a present application.

Having considered the submissions of both parties and examined the documents in support of this application I will now proceed to determine the merit of this application.

Bail is a right of an accused person under Article 13 (6) of the United Republic of Tanzania Constitution. However, the manner and procedure of how to get access to this right is governed by other laws. As rightly submitted by the learned counsel for the respondent, the law denies bail to an accused person where the DPP certifies under section 36 (2) of Cap. 200 that it is likely that the safety or interests of the Republic would be

prejudiced if the accused person is admitted to bail. The section reads as follows:-

"Notwithstanding anything in this section contained no person shall be admitted to bail pending trial, if the Director of Public Prosecutions certifies that it is likely that the safety or interests of the Republic would thereby be prejudiced."


It is not disputed that the DPP issued a certificate to resist bail to the applicants in respect of the same charges vide Misc. Criminal Application No. 49/2019. This Court considers the applicants' act of filing another application for bail on the same charges as designed to circumvent the certificate of the DPP. The views of this Court are fortified by the fact that in the joint affidavit the applicants indicated at paragraph 2 that this application emanates from Economic Crime Case No. 96 of 2019 while the charge sheet attached in support of the said charges shows that the charges are filed in Economic Crimes Case No. 13/2018 which is the same case where their previous application for bail (Misc. Criminal Application No. 49 of 2019) originated.

Since the DPP's certificate was already issued to oppose grant of bail to the accused persons (applicants herein) in respect of the same case (Economic Crimes Case No. 13/2018) at the Resident Magistrates'

Court of Arusha and there is no evidence to suggest that the said certificate did not meet the validity test the applicants cannot be admitted to bail pending trial since the said certificate remains in effect until the proceedings concerned are concluded or where the DPP withdraws the said certificate. That said, this application is dismissed.

It is so ordered.




K.N. ROBERT
JUDGE
12/11/2021