

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

MISCELLANEOUS CRIMINAL APPLICATION NO. 29 OF 2020

(Originating from Economic Crime case No. 20 of 2020 at Tabora
Resident Magistrate Court)

LEONARD ALOYCE @ MASOLA..... APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

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RULING

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Date of Lat Order: 15/10/2021

Date of Delivery: 5/11/2021

AMOUR S. KHAMIS, J.

Leonard Aloyce @ Masola was arraigned before the Resident Magistrates' court of Tabora for one economic offence namely, unlawful possession of government trophy contrary to section 86 (1) and (2)(c) (iii) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the 1st schedule to and section 57(1) and 60 (20 of the Economic and Organized Crime Control Act, Cap 200 R.E 2002 as amended by Section 13 (b) of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016.

It is alleged by the prosecution that, on 22nd day of January, 2020 during night hours along Mbeya-Tabora Road at Inyonga

East Game Controlled Area in Sikonge District within Tabora was found in possession of government trophies to wit, one elephant's tusk worth Tshs. 34,395,000/= the property of the Government of United Republic of Tanzania without a permit from the Director of Wildlife. Since the value of property (Government trophies) involved in the pending case is more than ten million shillings, the applicant has filed the present application for bail pending trial.

The application has been preferred under Section 29(4)(d) of the Economic and Crime Control Act, Cap 200 R.E 2002 and any other enabling provisions of law. It was made by way of chamber summons and supported by an affidavit sworn by Augustine Gatera Katabazi learned advocate, duly instructed to represent the applicant.

Mr. Katabazi deposed that the applicant swears and promise that, he will adequately abide with all bail condition as they will be set by the Court in granting bail.

Finally, the learned advocate averred that the applicant swears and state that when the case is schedule for hearing, he will be available for hearing without failure or delay.

Mr. John Mkonyi admitted Mr. Katabazi's averments on nature of charges pending in the trial court but generally disputed the grant bail under the circumstances the applicant might tamper with prosecution evidence or abuse the trial.

On the date of hearing Mr. John Mkonyi, learned State Attorney appeared for the Republic while Mr. A. G Katabazi, learned advocate dutifully acted for the applicant.

By consent, the application was canvassed by written submission and parties observed the time line set by the court.

Mr. Katabazi, submitted that if the applicant is granted with bail, he will adequately abide with all bail conditions.

Finally, he submitted that the applicant has no history of jumping bail and prayed to have him admitted on bail.

Mr. John Mkonyi challenged that the applicant that he failed to disclose his permanent residence and whether he has.

He further contended that at par graph 5 of the affidavit the applicant's advocate deposed that his client would abide by all bail conditions.

He argued that this was fatal and irregular since the advocate purported to swear or to speak words on behalf of the applicant without the applicant himself swearing an affidavit.

To bustle his argument, he cited the case of **BENEDICT KIMWAGA V PRINCIPAL SECRETARY MINISTRY OF HEALTH** Court of Appeal of Tanzania in Civil Application No. 31 of 2000 the Court held that:

"If an affidavit mentions another person, that other person has to swear an affidavit. However, it would add that is so where information of that other person is material evidence because without the other affidavit it would be hearsay"

In the light of the above submission in which the Counsel for the respondent submitted that since the facts pertaining bail compliance are material facts, they must come from the appellant himself and not his advocate.

The counsel for the respondent prayed that this application lacks merit hence the same should be dismissed.

In rejoinder, the learned advocate submitted that the respondent submission misconceived as he wrongly quoted paragraph 5 of the applicant's affidavit that the proper sentence in that affidavit reads "*The applicant swears and promise that he will adequate abide with all bail conditions*" and therefore it was advocate who swear on behalf of the applicant.

I am in agreement with both Learned Counsels that bail is a right to the accused person. Granting bail is based on the principle of presumption innocence and the right to person freedom which are treasured under Articles 13(6) (b) and 15 of the constitution of United Republic of Tanzania. In the case of **PATEL V REPUBLIC (1971) HLD NO. 391**, this Court emphasized on the status of the accused 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 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.

I am aware that a Court with competent jurisdiction has discretion of granting bail pending on the nature of each case, nature of offence and amount of money involved. 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 present application, the applicant is charged with bailable offences. The respondent did not object to bail application. However, he insisted this Court to consider that the applicant has sureties in Tabora.

The applicant states that he has reliable sureties who will ensure his availability during trial. The applicant in the case hand is charged with offences related to government trophy. I understated that it is a public interest to protect wildlife and other natural resources which are heritage of this Nation.


The applicant being charge with an economic offence, bail conditions are prescribed under Section 36 of the Economic and Organized Crime Control Act (Supra). This provision requires the applicant to pay cash bond or submit to Court the security whose valued is at least half of the valued of the property or money involved. The rest valued is required to be executed by bond.

In the circumstance, the application for bail pending trial is hereby granted. I accordingly admit the applicant to bail upon complying with the following conditions.

1. The Applicant to surrender his passport or any travelling documents, if any to the Resident Magistrate Court of Tabora at Tabora.
2. The Applicant shall deposit before the Court cash or title deed of an immovable property valued at Tshs. 17,197,500/=.
3. Applicant should have two reliable sureties and with fixed abode within the jurisdiction of the trial Court.
4. Each surety shall execute a bail bond in the sum of Tshs. 8,598,750/=.

5. Each surety shall produce an introductory letter from his or her employer or local authorities and a copy of recognized identity card.
6. Applicant shall appear in Court on all dates the case is pending before Tabora Resident Magistrate's Court, and,
7. The above bail conditions shall be supervised and sureties' certificate by the Magistrate.

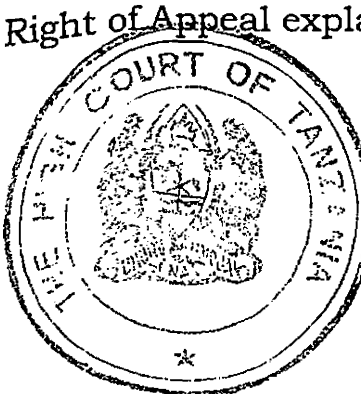
It is so ordered.



AMOUR S. KHAMIS
JUDGE
5/11/2021

ORDER:

Ruling delivered in Chambers in presence of Mr. D. Rwegira, State Attorney for the Republic and in absence of the applicant. Right of Appeal explained.



AMOUR S. KHAMIS
JUDGE
5/11/2021