

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO. 74 OF 2022

TAO PAN 1ST APPLICANT

ZHU WEI 2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Arising from Economic Case No. 29 of 2022 at the Resident
Magistrate's Court of Dar es Salaam at Kisutu)**

RULING

21st and 21st June, 2022

KISANYA, J.:

The applicants, Tao Pan and Zhui Wei seek to be admitted on bail pending trial. Their application is made under sections 29(4)(d) of the Economic and Organized Crimes Control Act [Cap 200 R.E 2019] (the EOCCA). It is supported by an affidavit sworn by Mr. Nehemiah Geoffrey Nkoko who introduced himself as the applicants' counsel.

Pursuant to the affidavit, the applicants stand charged before the Resident Magistrates' Court of Dar es Salaam at Kisutu in Economic Case No. 29 of 2022 for the offences of failure to produce documents of the uncustomed goods, failure to pay tax, fraudulent tax evasion and

two counts of being in possession of the uncustomed goods contrary to the relevant tax law and the EOCCA. It is worth nothing that, the offences laid against the applicants involve 507 bundles of *vitenge* each having 100 pieces worth TZS 514,734,855.60 and tax to the tune of Tshs. 409,100,968.53. That fact is also reflected in the charge sheet appended to the affidavit in support of the application.

When this application was placed before me for hearing today, the applicants were present in person and represented by Mr. Nehemia Nkoko and Mr. Nazario Michael, learned advocate. On the other hand, the Respondent was represented by Mr. Adolph Kisima, learned State Attorney.

Supporting the application, Mr. Nkoko prayed to adopt the chamber summons and affidavit as part of his submission. He prayed this Court to grant the application under section 148(5)(e) of the Criminal Procedure Act, Cap. 20, R.E. 2019. He also urged me to be guided by the case of **Lulu Victor Kayombo and Another vs R**, Misc. Economic Application No. 140 of 2021 (unreported) in which this Court exercised its judicial discretion by dispensing with the requirement of depositing half of the amount involved because the actual money had

not been established.

The Respondent did not contest the application. Mr. Kisima invited the Court to impose bail condition in terms of section 36(5) and (6) of the EOCCA.

The issue to be grappled by this Court is whether the applicants qualify to be admitted on bail pending trial. In so doing, I have considered that the offences the applicants are charged with are bailable offences and that bail is a constitutional right. I have also considered the position that bail is granted basing on the factors surrounding each case.

The circumstances of this case are to the effect that, the application is not contested by the respondent through the National Prosecutions Service. Also, the applicants deposed to have reliable sureties who are ready and willing to receive and to adhere to bail conditions which may be imposed by this Court. In the absence of evidence that the applicants are likely to jump bail or interfere with the investigation or other reasons, I find no ground of dismissing the application.

The crucial issue is on the bail conditions to be imposed by the Court. In determining this issue, I am guided by the provisions of section 36 (4), (5) and (6) of the EOCCA. In terms of the law, where the offence involves actual money or property exceeding ten million shillings, the accused person is required to deposit to the court cash or other property equivalent to half of the amount or property involved and the rest secured by execution of a bond. Given that the offences preferred against the appellant involves smuggling of 507 bundles of *vitenge*, I am of the view that the applicant are required to deposit half of the amount involved. It is my considered view that, the case of **Lulu Victor Kayombo** (supra) relied upon by Mr. Nkoko is distinguishable from the circumstances of this case due to the reason that it was related to the offence of occasioning loss. As to the offence of stealing, the Court considered that the particulars regarding the person or company to whom the property was stolen were wanting. This is not the case in the present case.

Considering further that the case subject to this application involves two accused persons, they are entitled to benefit from "the principle of sharing" stated in the case of **Silvester Hillu Dawi and Another vs. DPP**, Criminal Appeal No. 250 of 2006, CAT, at Dar es

Salaam (unreported). Thus, in view of the amount appearing in the charge sheet appended to the affidavit, each applicant shall be required to deposit TZS 102,257,252.13. In alternative, each applicant may deposit a title deed to prove existence of immovable property/properties valued at TZS 102,257,252.13.

Being guided by the foregoing, I allow the application and admit the applicants to bail pending trial on the following conditions:

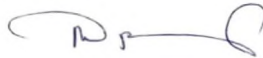
1. Each applicant shall not travel outside Dar es Salaam Region without a prior written approval of the Resident Magistrate assigned with this case.
2. Each applicant shall deposit to the custody of the court cash money or a title deed to prove existence of immovable property/properties valued at TZS 102,257,252.
3. Each applicant shall have two reliable sureties whereby at least one of them must be a citizen of Tanzania.
4. All sureties must have a fixed place of abode within Dar es Salaam Region.
5. Each surety shall execute a bond of Tshs. 51,137,621.00
6. Each surety shall produce an introductory letter from his or her employer or local authorities and a copy of recognized identity

card.

7. Each applicant shall surrender his passport or travelling document (if any).
8. Verification of the sureties and bond documents shall be executed by the Resident Magistrate assigned with the case pending at the Resident Magistrate's Court of Dar es Salaam at Kisutu.

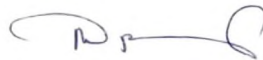
It is so ordered.

DATED at DAR ES SALAAM this 21st day of June, 2022.



S.E. Kisanya
JUDGE

Court: Ruling delivered this 21st day of June, 2022 in the presence of the applicants, Mr. Nehemiah Nkoko and Mr. Nazario Michael learned advocate for the applicants and Mr. Adolph Kisima, learned State Attorney for the Respondent.



S.E. Kisanya
JUDGE
21/06/2022