

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MOROGORO SUB-REGISTRY)**

**AT MOROGORO**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 15 OF 2021**

(Originating from Economic Crime Case No. 70 of 2020; Pending at the Resident Magistrates Courts of Morogoro, at Morogoro)

**LAURIAN JULIUS CHALI ..... APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

**11<sup>th</sup> & 29<sup>th</sup> April, 2022**

**CHABA, J.**

By way of Chamber Summons, the applicant, LAURIAN JULIUS CHALI is moving this Court under section 29 (4) (d) of The Economic and Organized Crimes Control Act [Cap. 200 R.E. 2019] (the EOCCA) seeking for bail pending trial of his case before the Resident Magistrates Courts of Morogoro, at Morogoro in Criminal Economic Crimes Case No. 70 of 2020. The application was filed under certificate of urgency, preferred by way of chamber summons which is supported by the affidavit sworn on 8<sup>th</sup> December, 2021 by Mr. Derick Vicent, learned advocate.

As gleaned from the affidavit deposed by Mr. Derick Vicent, the prosecution alleged that on 7/10/2020 the applicant and other seven (7) accused persons were arraigned before the Resident Magistrates Courts of Morogoro, at Morogoro facing one count, namely 6<sup>th</sup> Count to wit,

Unlawful Possession of Government Trophies Contrary to Section 86 (2) (b) and (3) of the Wildlife Conservation Act No. 05 of 2009 read together with para 4 of the First Schedule, Sections 57 (1) and 60 (2) of the the EOCCA, in Criminal Economic Crimes Case No. 70 of 2020.

It was alleged that, on 7<sup>th</sup> October, 2020 at Uleling'ombe Village, within Kilosa District in Morogoro Region, the applicant was found in possession of Government trophies, to wit two (5) pieces of Elephant meat worth USD 15,000.00 equivalent to Tanzanian Shillings Thirty Four Million Seven Hundred Ninety Five Thousand Eight Hundred (Say: 34,795,800/= only) the property of the Government of the United Republic of Tanzania without a permit from the Director of Wildlife.

When this application came up for hearing on 11/04/2022, Ms. Veronika Chacha, learned State Attorney entered appearance for the Respondent / Republic, whereas the Mr. Derick Vicent, learned advocate represented the applicant who also appeared in person. When Mr. Derick Vicent was invited to argue the application, he began by adopting the contents of his affidavit and briefly prayed orally that the applicant's application be allowed. Indeed, Mr. Derick Vicent reiterated what is stated in the affidavit deposed by him. His prayer was or is to see that his client is accordingly granted his prayer enjoy the right to bail pending trial.

In reply, Ms. Chacha did not seek to oppose the applicant's application. She highlighted that the Court in determining the application should not forget to consider the provisions of the law under section 36 (4) (e) and (5) of the the EOCCA.



Having summarised and considered the parties' oral submissions and upon gone through the chamber summons in support of the affidavit, it is apparent on record that the applicant is charged with the offence of unlawful possession of Government Trophies which is unbailable offence at the Subordinate Courts as articulated under section 29 (4) (d) of the EOCCA where the District Court and the Courts of Resident Magistrates have been excluded to grant bail to the accused person(s) at any stage before commencement of the trial where the value of the property is Ten Million Shillings or more. It therefore goes without saying that such powers and jurisdiction to entertain the matter have been vested in the High Court.

Before embarking on the merits of this application, it is thought prudent to highlight the following. It is a presumption of law that an accused person is presumed to be innocent until proved guilty by a Court of competent jurisdiction and or until such accused pleads guilty to the charge voluntarily. This presumption is enshrined in Article 13 (6) (b) of our Constitution of the United Republic of Tanzania (As amended). Again, pursuant to the Bail Guidelines issued by the Judiciary of Tanzania in September, 2020; the word bail has been defined to mean a temporary release of an accused person awaiting trial or appeal on conditions stipulated by the Court to guarantee his appearance in Court. Therefore, bail is granted to an accused person to ensure that he or she appears to stand his/her trial without the necessity of his being detained in custody in the meantime. The effect of bail is merely to release the accused from physical custody, but he or she is still under the jurisdiction of the law and is bound to appear at the appointed time and place.

As hinted above, the Applicant has been indicted for bailable offence and the Application has not been contested by the Respondent / Republic. In my considered opinion, there is no apparent meritorious reasons for the Court to refuse the Application. Despite the fact that the application is not contested, yet this Court by operation of the law, must satisfy itself that there is a triable issue capable of being heard by this Court.

Having highlighted the position of the law, I am now in a position to determine the application on merit. The question for consideration is whether or not the instant application is competent before me and before this Court and whether such an application can be granted as prayed.

Since the law is clear that 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, the only Court which is vested with the powers and jurisdiction to determine issues of bail in our jurisdiction as of now, is the High Court of Tanzania and such powers must be exercised judiciously, of course, depending on the circumstances of each case. No doubt that bail is a Constitutional right, but in my opinion, such right(s) cannot be given without scrutiny and scanning of the documents accompanied by the application tabled before the Court. Upon a careful perusal of the documents, I am satisfied that the applicant lodged his application in line with the proper provisions of the law. I thus hold that this application is competent before me and before this Court. (See: **Director of Public Prosecutions vs. Aneth John Makame** (Criminal Appeal No. 127 of 2018) [2018] TZCA 358 (02 November 2018) (Unreported)).



Under Section 36 (1) of the EOCCA, the law provides that after a person is charged but before he is convicted by the court, the court may on its own motion or **upon an application made by the accused person**, admit the applicant / accused person to bail subject to the conditions stipulated under sub-sections (2), (3), (4), (5) and (6) of section 36 of the EOCCA. However, for the purposes of this application, section 5 (a) – (d) is more relevant. Considering the facts that the learned Senior State Attorney conceded with applicant's application, I find no material facts that can rightly curtail the prayers sought by the applicant.

I have pointed out that, there is no apparent meritorious reasons for this court to refuse the applicant's application. Hence, the application for bail pending trial, if any, of the Criminal Economic Crimes Case against the Applicant is hereby granted. The Applicant shall therefore be admitted to bail on the following conditions and terms, thus:

- (i) The applicant is required to deposit cash money to the court or other property equivalent to half the amount or value of actual money or property involved as stated in a charge sheet (Tanzanian Shillings 17, 397,900/= or above) and the rest to be secured by execution of a bond. If the property to be deposited is immovable, the applicant shall deposit the title deed whose property is within Morogoro Region and shall be accompanied by the valuation report made by the authorised valuers employed by the authority vested with the powers to deal as such.
- (ii) The applicant shall have two reliable sureties whose fixed place of abode is within Morogoro Region which is the jurisdiction of this court;
- (iii) Each surety shall execute a bond of Tanzanian Shillings 8,698,950/= or above and produce an introductory letter from his or her Local Government Authority of the place of domicile with a copy of

recognized identity card in particular National Identity Card or Voters Identity Card;

- (iv) That, the Applicant shall surrender his passport and travelling documents (if any) to the Central Police Station as soon as practicable;
- (v) Movements of the Applicant / Accused person is hereby restricted only within the area of Morogoro Region; and
- (vi) Verification of the sureties and bond documents shall be executed by the Resident Magistrate's Court of Morogoro, at Morogoro and by the Resident Magistrate before whom the Criminal Economic Crime Case No. 70 of 2020 is pending.

That said and done, I order and direct that the trial magistrate (Hon. Japhet Manyama, SRM) to supervise the execution of bail conditions set herein above as soon as practicable. **it is so ordered.**

**Dated at MOROGORO this 29<sup>th</sup> day of April, 2022.**

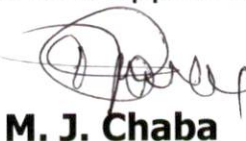
  
**M. J. Chaba**

**Judge**

**29/04/2022**

**Court:** Ruling delivered at my hand and the Seal of this Court in Chambers this 25<sup>th</sup> April, 2022 in the presence of Ms. Jamila Mziray, learned State Attorney for the Respondent / Republic and Mr. Derick Vicent, learned advocate for the Applicant who also appeared in person.



  
**M. J. Chaba**

**Judge**

**29/04/2022**