

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF MUSOMA)**

AT MUSOMA

Misc. CRIMINAL APPLICATION No. 32 of 2022

*(Arising from the District Court of Tarime at Tarime in
Economic Crimes Case No. 21 of 2022)*

1. SHABAN DIDAS BIFANDIMU @ BIFA
2. MLELA GODFREY KISAMBA } ----- **APPLICANTS**

Versus

THE REPUBLIC ----- RESPONDENT

RULING

27.06.2022 & 30.06.2022

Mtulya, J.:

Ms. Mary Samson, learned counsel, appeared in the chambers of this court this Monday, 27th June 2022, under the instructions of Mr. Shaban Didas Bifandimu @ Bifa and Mr. Mlela Godfrey Kisamba (the applicants) praying for bail to the applicants pending final determination of the **Economic Crimes Case No. 21 of 2022** (the case) filed at the **District Court of Tarime at Tarime** (the district court). In her application, Ms. Samson had attached a certificate of urgency contending that applicant's freedoms of movements are curtailed and that the nature of crimes and trends of prosecutions side, there are signs that the case will not reach its finality in near soon.

Being aware of section 148 (1) of the **Criminal Procedure Act** [Cap 20 R.E. 2019] (the Criminal Procedure Act) and section 29 (4) of the **Economic and Organised Crimes Control Act** [Cap. 200 R.E. 2019] as amended by section 35 of the **Witten Laws (Miscellaneous Amendment) Act, No. 1 of 2022** (the Economic Crimes Act), Ms. Mary drafted in the fourth and fifth paragraphs of her affidavit the following text, in brief: the applicants are charged with minerals stealing valued at Tanzanian Shillings 2,033,636,719.42 and according to the laws regulating bail are entitled to enjoy bail, but the district court has no jurisdiction to hear and entertain bail applications of the cited amount.

During the hearing of the application this Monday, Ms. Samson had a very brief submission in this court in support of the application and contended that bail is both constitutional and human right matter and is cherished by the Criminal Procedure Act and Economic Crimes Act. Finally, Ms. Samson prayed this court to adopt her affidavit and consider it to be part of the proceedings and grant present application because: first, bail is a constitutional right; second, the Republic did not file any certificate drafted under section 36 (2) of the Economic Crimes Act to protest the application for public interest; and finally, the applicants are ready to abide with any bail conditions.

The prayer and registered materials of Ms. Samson were not protested by the Republic which marshalled Mr. Tawabu Issa Yahya, learned State Attorney. In his brief submission in reply of the submission of Ms. Samson, Mr. Tawabu supported that application and briefly stated that the application is obvious and allowed in law, but the applicants must fulfill bail conditions as prescribed by the law.

I have scanned the present record, the law regulating bail in circumstances like the present one and precedents emanating in this court and Court of Appeal on the subject. The record shows that the applicants were arraigned before the district court to reply two charges of stealing and possession of unauthorized possession of minerals contrary to sections 258 (1) & 265 of the **Penal Code** [Cap. 16 R.E. 2019] (the Code) and sections 18 (1) & (4) of the **Mining Act**, No. 10 of 2010 (the Mining Act) reading together with sections 57 (1) & 60 (2) and Paragraph 27 of the First Schedule to the Economic Crimes Act, respectively.

The materials in the charge shows that the applicants are alleged to have stolen and possessed of 21.46 kilograms of stones containing gold minerals worth Tanzanian Shillings 2,033,636,719.42/= property of Barrick North Mara at Double Gate area into Barrick North Mara Gold Mine Ltd within Tarime District in Mara Region. The applicant are complained on possession of the

said materials without having in their possession Primary Mining License, Dealers License, Brokers License or Mineral Right License.

The law under section 148 (1) of the Criminal Procedure Act and section 29 (4) of the Economic Crimes Act allow bail in cases like the present one. However, section 29 (4) of the Economic Crimes Act as amended by section 35 of the **Written Laws (Miscellaneous Amendment) Act, No. 1 of 2022**, provides that when the value of money involved in the offence is more than Three Hundred Million, bail applications must be registered and decided in this court.

The practice available in this court and the Court of Appeal in applications like the present one shows that: first, article 13 (2) (b) of the Constitution, section 148 (1) of the Criminal Procedure Act and section 29 (4) of the Economic Crimes Act are customarily invited when granting bail; second, in granting and listing bail conditions, this court is guided by the provisions in section 36 (5) (a)-(d) & 36 (6) (a) – (c) of the Act; and finally, this court may give any conditions which thinks fit for interest of justice and accountability of applicants.

There is a large bunch of precedents in place displaying the above cited practice (see: **Francis Davis Mchacky & Ten Others v, Republic**, Misc. Criminal Economic Application No. 14 of 2022; **Leonard Revocatus Mitti & Another v. Republic**, Misc. Criminal

Application No. 52 of 2021; **Abadi Seif Said & Seven Others v. Republic**, Misc. Criminal Application No. 7 of 2020; **Adam Genes @ Mkini v. Republic**, Misc. Criminal Application No. 64; **Freeman Aikael Mbowe & Another v. Republic**, Criminal Appeal No. 344 of 2018; **Director of Public Prosecutions v. Dennis & Eleven Others**, Criminal Appeal Case No. 87 of 2019 and **Prof. Dr. Costa Ricky Mahalu & Another v. The Hon. Attorney General**, Miscellaneous Civil Cause No. 35 of 2007). The mostly quoted passage in the precedents is found at page 30 in the Ruling of **Prof. Dr. Costa Ricky Mahalu & Another v. The Hon. Attorney General** (supra) that:

It is generally accepted that once an offence is bailable, the applicable principle requires that the conditions must be reasonable...However, when it comes to the application of the Act [the Economic Crimes Act] ... Once charged, a person who does not have the requisite amount will have no option but to be deprived of his liberty not because the offence is not bailable but because he cannot meet the condition of depositing the requisite amount of money...

(Emphasis supplied).

The reasoning of this court in the precedent is reflected at page 33 of the Ruling in the following words:

*It is indisputable fact that the Act [the Economic Crimes Act] was enacted **for purpose of control and eradication of economic crimes with a view of protecting public property and national economy as a whole.** It is important legislation in view of challenges facing our growing economy...*

(Emphasis supplied).

This reasoning of the court is within the purpose behind enactment of the provisions in section 36 (5) & (6) of the Act and has been followed by several other precedents of this court (see: **Francis Davis Mchacky & Ten Others v. Republic** (supra); **Salum Abeid Mbaya & Ten Others v. Republic**, Consolidate Misc. Economic Applications Nos. 68 & 69 of 2019; **Said Bakari & Another v. Republic**, Misc. Criminal Economic Application No. 79 of 2020; **Juma Kambi Kong'wa & Another v. Republic**, Misc. Economic Cause No. 16 of 2017; and **Fausta Gaitan Lumoso & Three Others v. Republic**, Misc. Economic Cause No. 40 of 2017).

It has been the practice of this court to follow its previous decisions on similar issue without any reservations in favour of predictability and certainty of decisions determined in this court. This

application shall face the same course. However, I am aware that when there are more than one applicant in the same application, the principle of sharing the amount of value of money involved in an offence is invited (see: **Francis Davis Mchacky & Ten Others v. Republic** (supra); **Silvester Hillu Dawi and Others v. Director of Public Prosecutions**, Criminal Appeal No. 250 of 2006; **Abeid Mussa & Another v. Republic**, Misc. Criminal Application No. 9 of 2017; **Salum Abeid Mbaya & Ten Others v. Republic** (supra); and **Said Bakari & Another v. Republic**, Misc. Criminal Economic Application No. 79 of 2020).

As I indicated above in this Ruling, this court is authorized to impose any conditions which may deem fit for the interest of justice and accountability on the part of applicants. Having said so, and considering the conditions under the provisions of section 36 (5) (a)–(d) & (6) (a)–(c) of the Act, and regarding several cited precedents in this Ruling, I am moved to grant bail to the applicants pending hearing and final determination of the case. However, the applicants shall be released upon fulfilling the following listed conditions:

1. Each Applicant shall surrender his passport or any other travelling documents, if any, to the Deputy Registrar of this court;

2. Each applicant shall report to the Deputy Registrar of this court or District Resident Magistrate In-charge of the Tarime District Court at Tarime once in every last Monday of a month and sign a specific register, if need be;
3. Each applicant shall not travel out of the state of Tanzania without prior written leave of the Registrar of this court;
4. Each applicant should have two sureties, and one must be employee of the government, local government, government agency, or any other organization recognized under the law and must be resident within the state of Tanzania;
5. Each applicant's sureties should submit letters and certified copies of identity cards from their respective employers;
6. Each applicant's sureties should produce in court letter of introduction from their respective Street or Village Chairman;
7. Each applicant must enter appearance in court on every date when the case is scheduled for mention, hearing or any other order or direction of the District or High Court;
8. Each applicant's sureties shall undertake to make sure that his/her applicant is available and enter attendance in court whenever required;

9. Each applicant shall deposit cash in sum Tanzanian Shillings Five Hundred Twenty Million Only (520,000,000/=) or in case the applicant decides to deposit immovable or approved property, he/she shall deposit either title deed supported by Valuation Report from the Government Valuer or documents justifying the approved property from the appropriate authority displaying equivalent or more amount of money cited above; and

10. Each of the applicant's sureties shall sign a bond of sum of Tanzanian Shillings Two Hundred Sixty Million Only (260,000,000/=) as a security for appearance of the respective applicant in court.

The above ordered bail conditions shall be supervised and sureties certified by the Deputy Registrar of this court, Musoma District Registry.

Ordered accordingly.

Right of appeal explained.

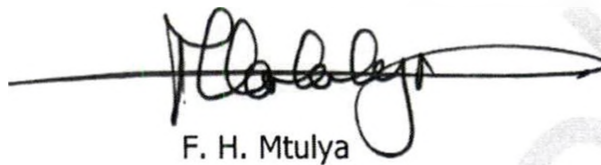


F. H. Mtulya

Judge

30.06.2022

This Ruling was delivered in Chambers under the seal of this court in the presence of the applicants' learned counsels, Ms. Mary Samson through teleconference and in the absence of the respondent.

A handwritten signature in black ink, appearing to read 'F. H. Mtulya', with a long horizontal line extending to the right.

F. H. Mtulya

Judge

30.06.2022

Original