

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 60 OF 2022

*(Arising from Economic Case No 1 of 2022 pending before the Resident Magistrate
Court of Kivukoni at Kinondoni)*

FELICIAN CYRIL TABUYA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Date of last Order: 30/05/2022

Date of Ruling: 03/06/2022

E.E. KAKOLAKI J.

The applicant before this Court is applying for bail in Economic Case No. 1 of 2022, pending trial before the Resident Magistrates Court of Kivukoni at Kinondoni. The application is preferred under sections 148(3) and 292A of Criminal Procedure Act [Cap 20 R.E 2019] and 36 (1) of the Economic and Organized Crime Control Act [Cap 200 R.E 2019] here in referred to as EOCCA. The application is supported by the affidavit of Mluge Karoli Fabian, applicant's advocate. Gathered from the affidavit, the applicant Felician Cyril Tabuya and two other persons not subjects of this application stand charged before the Resident Magistrates Court of Kivukoni at Kinondoni for Unlawful

Possession of Government Trophies; Contrary to sections 85(1) (a), 86 (1) and (2) (c) (i) of the Wild Life Conservation Act, No. 5 of 2009 read together with paragraph 14 of the first schedule to the Act and Sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, [Cap 200 R.E 2019]. Since the case is pending for trial, in the meantime the applicant is remanded at Segerea Prison.

It is alleged in the charge sheet attached to the affidavit that, on 28th February, 2022 at Ubungo National Housing area within Ubungo District in Dar es Salaam Region, the applicant together with two others were found in unlawful possession of Government trophies, to wit, 25 pieces of elephant tusks valued at Tsh.480,242,973/=, the property of the Government of Tanzania. Since the value of the property involved in the offence deprives the subordinate courts' power to hear and determine the application for bail whose total amount exceeds Tshs. 300,000,000/-, the applicant is forced to lodge the present application to this court. It was further averred that, the applicant is the resident of Dar es Salaam, and has reliable sureties who can guarantee and procure his attendance in court as it may be required by the trial court.

On the respondent's side no counter affidavit was filed in opposition of the application, hence concession of what is stated by the applicant. During hearing parties were heard viva voce, as both were represented. Applicant hired the services of Mluge Karol Fabian, learned Advocate, while respondent enjoyed the services of Mr. Genes Tesha, learned Senior State Attorney.

Supporting the application Mr. Fabian adopted the supporting affidavit and submitted that, the value of the property involved is above three hundred millions (300,000,000), hence this court has jurisdiction to entertain the matter. He went on saying, since the case is bailable and no certificate objecting the bail has been preferred by the DPP, and since applicant has reliable sureties and ready to abide to the conditions set by this court, then this court be pleased to grant the application. Further to that, Mr. Fabian sought indulgence of this court to adopt the bail conditions set by this court in Criminal Application No. 45 of 2022, where the 3rd accused in the same case was granted bail.

On his side, Mr. Tesha conceded to the application while reminding the court to be guided by the provisions of section 36 (5) and (6) of EOCCA, when setting bail conditions.

I have carefully studied the applicant's affidavit in support of this applicant and the submission made by both learned legal minds. Admittedly the offence with which the accused is being charged with is bailable and this Court is seized with jurisdiction to entertain the application as provided under section 29 (4) (a) of EOCCA as amended by section 35 of the written laws (Miscellaneous Amendments) Act No. 1 of 2020 and 36 (1) of EOCCA. It is also stated that the applicant has reliable sureties ready to secure his presence when called by the trial court and he is ready to abide to all conditions set by this Court. All those factors considered, I find the applicant is entitled to his right to bail as to hold otherwise is tantamount to denying him that basic Constitutional right as enshrined violation of Articles 13 (6) (b), and 15 (1) and 15 (2)(a) of the Constitution of the United Republic of Tanzania, 1977 as amended, as well as the principle stated by the Court of appeal in the case of **Director of Public Prosecutor Vs. Daudi Pete (1993) TLR 22.**

It is also uncontroverted fact that the applicant is charged jointly and together with other two fellows as alluded to. This fact entitles him to benefit from the principle of sharing as rightly stated in the case of **Silvester Hillu Dawi & Another Vs. Director of Public Prosecutions**, Criminal Appeal

No. 250 of 2006 (CAT unreported). It is also settled law that in considering bail condition in economic offences Courts have to be guided by the provision of section 36(5)(a)(b)(c)(d) and (6)(a)(b)(c) of the EOCCA. All taken in to consideration this Court grants bail to the applicant on the following conditions:

1. The applicant shall deposit to the custody of the court a sum of Tshs. 80,040,495.5/= in cash or tittle deed or evidence satisfactory to prove existence of immovable property/properties valued Tshs. 80,040,495.5
2. The applicant shall have two reliable sureties with fixed place of abode within Dar es Salaam Region.
3. Each surety shall execute a bond of Tshs. 40,020,000/=
4. Each surety shall produce an introductory letter from his or her employer and a copy of National identity card dully issued by NIDA.
5. The applicant shall surrender his passport or travelling documents (if any).
6. The applicant must attend in court on every date his case is scheduled.
7. During the pendency of the case before the Resident Magistrate's Court of Kivukoni at Kinondoni, the applicant shall not travel outside

Dar es Salaam Region without a prior written approval of the Resident Magistrate assigned with the case

For purposes of convenience, sureties' verification and bond documents be executed by the Resident Magistrate assigned with the case pending before the Resident Magistrates Court of Kivukoni at Kinondoni.

It is so ordered.

DATED at Dar es salaam this 03rd day of June, 2022.



E. E. KAKOLAKI

JUDGE

03/06/2022.

The Judgment has been delivered at Dar es Salaam today on 03rd day of June, 2022 in the presence of Mr. Mluge Karol Fabian, advocate for the Applicant, the applicant in person and Ms. Monica Msuya, Court clerk and in the absence of the Respondent.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

03/06/2022

