

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

MISCELLENEOUS ECONOMIC APPLICATION NO. 02 OF 2022

(Arising from Economic Case No. 01 of 2022 of the Kigoma District Court of Kigoma.)

MASANJA S/O NUNGULA @ MANAMBA.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

17/06/2022 & 20/06/2022

F. K. MANYANDA, J.

This is an application for bail by one Masanja s/o Nungula @ Manamba, who is charged in Economic Case No. 01 of 2022 of the Kigoma District Court with two counts of economic crimes namely, unlawful possession of firearm and unlawful possession of ammunition, contrary to section 20(1)(b) of the Fire Arms and Ammunition Control Act, No. 2 of 2015, [Cap. 200 R. E. 2019], read together with paragraph 31 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, [Cap 200 R. E 2019]. He is also charged with two counts of non-economic offences namely, stealing; contrary to sections 258(1)



and 265 and malicious damage to property; contrary to section 326(1) both of the Penal Code, [Cap. 16 R. E. 2019].

The economic case is triable by the Corruption and Economic Crimes Division of the High Court and offences are bailable pending trial. However, the Director of Public Prosecutions is yet to release his fiat under section 26(1) nor granted a certificate under section 12(3) and (4) both of the Economic and Organized Crime Control Act, conferring power to the subordinate court to try economic crimes.

The Applicant therefore made an application before the said District Court as a committal court which could not grant bail on reason that since the value of the subject matter is not disclosed in the charge sheet, then, it was not clothed with the requisite jurisdiction to grant bail.

Due to that reason, the Applicant made the instant application under sections 29(4)(d) of the Economic and Organized Crimes Control Act, I must say right from here that the applicable law is Section 29(4)(a) of the Economic and Organized Crimes Control Act, as it will be demonstrated later in this ruling.

At the oral hearing the Applicant was represented by Mr. Daniel Lumenyela, learned Advocate, while the Respondent, Republic was represented by Ms. Antia Julias, learned State Attorney.

Mr. Lumenyela after adopting the chamber summons and the supporting affidavit, submitted that the accused is charged with two counts of economic crimes being counts 3 and 4 in the charge. That there is no value of the subject matters stated in the particulars of offence, circumstances which make the lower court to lack jurisdiction to grant bail. He submitted further that he was not sure if the Director of Public Prosecutions issued consent and certificate for conferring on a subordinate court to try economic crimes. However, he pointed that this Court has unlimited jurisdiction. That the accused has reliable sureties, is ready to abide with conditions that may be set up and is ready to avail himself before the Court whenever he will be so required.

The State Attorney argued on a legal issue only because they did not contest the facts deposed in the affidavit. She submitted that the accused is charged with economic crimes and that the Director of Public Prosecutions is yet to issue consent and certificate to confer jurisdiction on a subordinate court to try economic crimes. In the circumstances, she was



of views that the application has been preferred prematurely because the accused has not been arraigned before this Court.

She added further that this Court (High Court) gets jurisdiction when the accused is arraigned before it. However, the High Court is not seized with jurisdiction to try economic crimes. It is the Corruption and Economic Crimes Division of the High Court which has exclusive jurisdiction to try economic crimes; however, it has no jurisdiction to grant bail under the said provision of the law.

By way of rejoinder, Mr. Lumenyela submitted that this Court has unlimited jurisdiction in issues of bail concerning economic crimes. He cited the case of **Baraka Musa Jaffari vs. Republic**, Criminal Application No. 19 of 2021 where this Court, Hon. Rwizire, J. relied on Article 108(2) of the United Republic of Tanzania Constitution of 1977 which provides responsibility of determining cases to this Court and ruled that this Court has jurisdiction to grant bail during the period between arrest and committal to the trial court. The Counsel also cited the case of **Shaibu Hussein Twaib @ Mambosafi vs. Republic**, Miscellaneous Criminal Application No. 33 of 2019 in which this Court



I have dispassionately gone through the chamber summons, affidavit and the submissions by Mr. Lumenyela for the Applicant on one hand and gone through the submissions by the State Attorney on the other hand. Basically, it is not disputed that the Applicant was arrested and charged with among others, two counts of economic crimes of unlawful possession of firearm and unlawful possession of ammunition, contrary to section 20(1)(b) of the Fire Arms and Ammunition Control Act, No. 2 of 2015, [Cap. 200 R. E. 2019], read together with paragraph 31 of the First Schedule to, and sections 57(1) and 60(2) the Economic and Organized Crime Control Act, [Cap. 200 R. E 2019]. He is also charged with two counts of non-economic offences namely, stealing; contrary to sections 258(1) and 265 and malicious damage to property; contrary to section 326(1) both of the Penal Code, [Cap. 16 R. E. 2019]. Also, it is not in dispute that the value of the subject matter is not disclosed in the economic crimes counts in the charge.

Bail in economic crimes is provided under section 29(4) of the Economic and Organized Crime Control Act, as amended by Act No. 3 of 2016. It reads: -

"29(4) After the accused has been addressed as required by subsection (3) the Magistrate shall, before ordering that he



be held in remand prison, where bail is not petitioned for or is not granted, explain to the accused person his right, if he wishes, to petition for bail and for purposes of this section the power to hear bail applications and grant bail: -.

- (a) between the arrest and the committal of the accused for trial by the Court, is hereby vested in the district Court and the Court of the resident Magistrate if the value of any property involved in the offence charged is less than ten million shillings.*
- (b) after committal of the accused for trial but before commencement of the trial before the Court is hereby vested in the High Court.*
- (c) after the trial has commenced before the Court, is hereby vested in the Court.*
- (d) in all cases where the value of any property involved in the offence charged is ten million shilling or more at any stage before commencement of the trial before the Court is hereby vested in the High Court."*

As it can be seen the provision quoted above vests in different Courts the power to hear and determine bail applications under the Economic and Organized Crime Control Act, depending on the stage the proceedings

concerned has reached and the value of the property involved in the charge. It can be summarized as follows: -

- (a) The committal courts namely, District Court and the Court of the Resident Magistrate have powers between arrest and committal or after the filing of the DPP's certificate conferring jurisdiction, if the value is less than ten million shillings.
- (b) The High Court before committal where the value is ten million shillings or more; and
- (c) The Corruption and Economic Crimes Division of the High Court after committal and during commencement of the trial regardless of the value.

In this application the stage of the proceedings is between arrest and committal for trial. The High Court could have power if the value of the property is more than ten million shilling or per interpretation of the Court of Appeal in the case of **Mwita Ikohi and 2 others vs Republic**, Criminal Appeal No. 60 of 2018 (unreported) at page 11 where it stated inter alia that: -



"Of particular interest and relevance in this matter is section 29(4)(d). It confers on the High Court the jurisdiction to grant bail 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 in the Corruption and Economic Crimes Division of the High Court."

Going by the clarification of the Court of appeal in **Ikohi's case (supra)**, the value of the property is a necessary ingredient in jurisdiction of this Court to grant bail to economic and organized crimes.

In the event, I agree with the State Attorney's submissions that this Court has no jurisdiction to hear and determine this application at this stage of proceedings which is between arrest and committal to the Corruption and Economic Crimes Division of the High Court because of lack of the value of the property.

Basing on the reasons stated above, I find that this application is misplaced. I do hereby dismiss the same for want of jurisdiction. Order accordingly.




F. K. MANYANDA

JUDGE

20/06/2022