

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO.35 OF 2022

*(Originating from District Court of Lindi at Lindi in Economic Case No.3
of 2022)*

SELEMAN KASIANI MNUNGUDACHI.....1ST APPLICANT

JUMA RASHID ABDALLAH.....2ND APPLICANT

HAMISI HEMEDI @LEBA.....3RD APPLICANT

JUMA MOHAMED MADUDU.....4TH APPLICANT

LIGHT YOHANA MBEZI.....5TH APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Last Order: 20/7/2022

Date of Ruling: 1/8/2022

LALTAIKA, J.:

The applicants herein, **SELEMAN KASIANI MNUNGUDACHI, JUMA RASHID ABDALLAH, HAMISI HEMEDI @LEBA, JUMA MOHAMED MADUDU and LIGHT YOHANA MBEZI** are seeking bail pending trial of Economic Case No.3 of 2022 before the District Court of

Lindi at Lindi. The application is brought under section 29(4)(d) and 36(1) of the Economic and Organized Crimes Control Act [Cap. 200 R.E. 2019]. The application is supported by an affidavit jointly affirmed by the applicants. The respondent, on the other hand, has not filed a counter affidavit.

When this application came on for hearing on 20/7/2022 all applicants appeared in person, unrepresented while the respondent was represented by Mr. Enosh Kigoryo, learned State Attorney. Each applicant was accorded a right to submit on the application before this court.

In general, each applicant provided a background on how he was arrested and brought to court. Moreover, all of them and at different occasions submitted on the account of being admitted to bail pending trial of Economic Case No.3 of 2022 which is before the District Court of Lindi at Lindi. They also prayed their joint affirmed affidavit be adopted and form part of their submissions.

In reply, Mr Kigoryo submitted that although the respondent had not filed the counter affidavit, he was opposing the application. The learned State Attorney went further and argued that contesting any application without filing a counter affidavit is in line with the case of **The Editor Msanii Africa Newspaper vs Zakaria Kabengwe**, Civil Application No.2 of 2019 CAT, Mwanza at page 9 (unreported). The learned State Attorney argued that this court has no jurisdiction to grant bail to the applicants.

Mr. Kigoryo further submitted that the application is brought vide section 29(4)(d) and 36(1) of the Economic and Organized Crimes Control Act [Cap. 200 R.E. 2019]. He also argued that the applicants have

annexed their affidavit with the charge sheet marked PHD1 which indicates that the applicants are charged with two offences: **One**, occasioning loss to a specified authority contrary to paragraph 10(l) of the First Schedule and section 57(1) and 60(2) of the EOCCA (supra). **Two**, Malicious damage to property contrary to section 326(6A)(a) of the Penal Code[Cap 16 R.E. 2019]. He argued further that the damage caused on the natural gas pipeline that goes through Ruaha Village is valued at TZS 61,390,000/=.

The learned State Attorney stressed that in cognizant to section 29(4)(a) of the EOCCA (supra) as amended by Written Miscellaneous Amendment Act No.1 of 2022 the District Court is empowered to grant bail in all offences in which the value of the property involved is less than TZS. 300,000,000/=. He further submitted that the amendment was published on 8th of March 2022 where section 35 brought these changes.

It is Mr. Kigoryo's submission that the charge indicates the value of the property involved is less than three hundred million. To this end, the learned State Attorney argued that since it the lower court which is empowered to grant bail and the applicants were not denied the same by the lower court, this application be struck out for want of jurisdiction and applicants be advised to file their application at the committing court of the Resident Magistrate Court of Lindi.

In a short rejoinder, the third applicant submitted that they came here to be admitted to bail which is their constitutional right. They emphasised that they have brought this application since they were told not to say anything in the lower court.

I have keenly scrutinized the submissions for and against the application. Now, I am required to settle the issue of whether this court has jurisdiction to entertain this application regarding the value of the property(ies) alleged to have been damaged by the applicants.

The annexed charged sheet shows that the applicants are alleged to have damaged and occasioned loss to property (a part of the natural gas pipeline) of Tanzania Petroleum Development Corporation (TPDC) valued at TZS 61,390,000/=. It is undisputed that the value of the property alleged to have been damaged and loss occasioned thereto which vests jurisdiction to either the subordinate courts or the High Court. It is section 29(4)(a) and (d) of the Economic and Organised Crime Control Act which provides for jurisdiction to determine bail applications while the main case is at committal stage.

Previously, the subordinate courts were vested with jurisdiction to grant bail upon applications if the value of the property involved in the offence charged was less than ten million shillings. The High Court was vested with jurisdiction to grant bail while the case is at committal stage where the property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court.

Indeed, law as we know it, is not static but dynamic. In line with such a truism, the Parliament of the United Republic of Tanzania passed the Written Laws (Miscellaneous Amendments) Act, No.1 of 2022. The Act was assented by the president of the United Republic of Tanzania, Hon. Samia Suluhu Hassan on 23rd February, 2022. The same was gazetted on the Gazette of the United Republic of Tanzania No.1 Vol.103 dated 8th March, 2022 Printed by the Government Printer, Dodoma by Order of

Government. Therefore, from where it was gazetted that law became operative in our jurisdiction. The said law brought tremendous changes on the value of property involved in the offence charged. It is section 35 of the Written Laws (Miscellaneous Amendments) Act, No.1 of 2022 which brought those changes. It amended section 29 (4) and deleted the words "**ten million shillings**" appearing in paragraph (a) and substituted for them the words "**three hundred million shillings**".

Following that amendment, the pecuniary jurisdiction of subordinate courts and the High Court in determining bail pending committal have changed to the extent I have expounded herein above. In the present application, the applicants have been charged with two counts of damaging and occasioning loss to a specified authority and malicious damage to property (natural gas pipeline) of Tanzania Petroleum Development Corporation (TPDC) at TZS. 61,390,000/= . Surely, the alleged loss occasioned and damage caused by the applicants is within the jurisdiction of the subordinate court (The Resident Magistrate Court of Lindi at Lindi) and not this court.

To that end, I call upon the applicants to immediately lodge their application at the Resident Magistrate Court of Lindi at Lindi without due delay. More importantly, I direct the Resident Magistrate Court of Lindi at Lindi to take this matter with extreme urgency since the offence facing the applicants is bailable. In addition, the Resident Magistrate Court of Lindi at Lindi is reminded the importance of cherishing the principle that bail to applicants is a constitutional right.

All said and done, I find this application is incompetent for want of jurisdiction. Therefore, I strike it out. The applicants shall continue to be in the remand custody until when the Resident Magistrate Court of Lindi at Lindi admits them to bail.

It is so ordered.

E.I. LALTAIKA



JUDGE

1.8.2022

