

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 20 OF 2022**

*(Originating from Songea District Court in Economic No. 02/2022)*

**OMAR MOHAMED SAID ..... 1<sup>ST</sup> APPLICANT**

**KENETH MKONDOLA.....2<sup>ND</sup> APPLICANT**

**EDITHA SANGANA .....3<sup>RD</sup> APPLICANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

**RULING**

04.07.2022 & 15.07.2022

**U. E. Madeha, J.**

In this application the Applicants are requesting for bail under sections 29 (4) (d) and 36 of the Economic and Organized Crime Control Act [Cap 200 Revised Edition 2019]. Ms Shose Naimani, the learned Senior State Attorney representing the Respondent Republic filed a notice of preliminary objection that the Applicants were not required to apply for bail due to the reason that the offence in which the Applicants are charged with is bailable in the subordinate Court.

During the hearing of the preliminary objection the Applicants were unrepresented, that is they appeared in person. Submitting on the preliminary objection, Ms. Shose Naimani stated that, the Applicants have applied for bail before this Court instead of doing the same at the subordinate Court. According to the Learned Senior State Attorney the subordinate Court has powers to grant bail to the Applicants in this matter.

She elaborated that the Applicants are charged with the offence of unlawful possession of a government trophy contrary to sections 86 (1) and (2) (b) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the first schedule and sections 57(1) and 60 (2) of the Economic and Organized Crime Control Act [Cap 200, Revised Edition 2019]. That, the Applicants were found in possession of a government trophy, to wit, one piece of elephant tusk valued at Tanzanian shillings thirty-four million, eight hundred forty-nine thousand and five hundred (34,849,500).

Ms. Shoshe Naimani contended that while going through the Written Laws Miscellaneous Amendment Act No.1 of 2022, which amends section 29 (4) of the Economic and Organized Crime Control Act (*supra*) the Applicants were not supposed to file this application at the High Court because the Resident Magistrate Court has jurisdiction to grant bail to the tune of

Tanzanian shillings three hundred million (300,000,000). She insisted that for this purpose the Applicants are supposed to file their prayers for bail at the subordinate Court. Finally, she prayed that the Court be pleased to dismiss this application.

In response, the Applicants had nothing fundamental to counter the objection by the Respondent. They argued that the Resident Magistrate Court of Songea has imposed stringent bail conditions. Therefore, they asked for a reduction in bail conditions.

In her brief rejoinder submission, Ms. Shose Naiman stated that the Resident Court has the power to grant bail and if they have been given strict conditions, all they have to do is the appeal and not ask for bail in this court.

In light of above submissions from both sides, it is the finding of this Court that in respect to the offence to which the Applicants are charged, the Resident Magistrate Court has jurisdiction to grant them bail. This is so because the Applicants have been charged for possession of government of an estimated value capable of being entertained in the Resident Magistrate Court. That the alleged government trophy of in the matter has been valued at Tanzanian shillings thirty-four million, eight hundred forty-nine thousand

and five hundred (34,849,500) million and statutorily, a Resident Magistrate Court has the legal capacity to grant bail up to Tanzanian shillings three hundred million (300,000,000).

Besides, it can be re-called that the Applicant's stated in their submissions that they have already been granted bail in the Resident Magistrate's Court, but unfortunately, the bail conditions are strict. Thus, they are basically asking for a reduction in the bail conditions.

To recapitulate and in avoidance of arbitrarily, I hereby concur with the Learned Senior State Attorney and remark that Applicants are supposed to file an appeal in order to pray for a reduction of bail conditions and not to re-apply for bail again as they have. Henceforth, the Applicant's application has no legs to stand, it is untenable before this Honourable Court.

Lastly, with all that being said, I do hereby strike out the purported application. Order accordingly.

**DATED and DELIVERED at SONGEA this 15<sup>th</sup> day of July 2022.**



  
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**U. E. MADEHA**

**JUDGE**

**15/07/2022**