

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

**CONSOLIDATED MISC. ECONOMIC APPLICATIONS NO. 01 & 05 OF
2022**

*(Arising from Economic Case No. 31 of 2021 at the Resident Magistrate's
Court of Bukoba at Bukoba)*

- 1. FURAHA S/O ALFAXARD @ NYABENDA.....1ST APPLICANT**
2. STANSLAUS S/O JOSEPH @TIBAMANYA.....2ND APPLICANT
3. COSMOS S/O CLEMENCE.....3RD APPLICANT
4. ERNEST S/O KANYABURIGI @ MZEE.....4TH APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

28/01/2022 & 31/01/2022

NGIGWANA, J.

The applicants have moved this court under certificate of urgency and by way of chamber summons made under Section 29 (4) (d) and 36(1) and (7) of The Economic and Organized Crimes Control Act [Cap 200 R.E 2019] (the EOCCA), read together with section 392 of the Criminal Procedure Act, Cap 20 R:E 2019 as amended by section 24 of the Written Laws (Miscellaneous Amendments) Act, No.3 of 2011 seeking for the following orders;

- 1. That this Honorable court be pleased to grant bail to the applicants on conditions as the court may deem fit and just pending trial in*

Economic case No.31 of 2021 before the Court of the Resident Magistrate for Kagera at Bukoba.

2. Any other relief the court may deem fit and just to grant.

The copy of the charge sheet appended to both applications show that, the applicants are jointly charged with two counts; first; Leading Organized Crime Contrary to Paragraph 4(1) (a) of the First Schedule to and Sections 57(1) and 60 (2) of the Economic and Organized Crimes Control Act Cap. 200 R: E 2019. It was alleged that the applicants on unknown day between August 2021 and September, 2021 at Burigi Chatto National Park within Karagwe District Kagera Region, willfully did organize and manage a criminal racket.

2nd count, killing animal Contrary to Section 47 (a) (iii) (a) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the First Schedule to and Sections 57 (1) and (60 (2) of the Economic and Organized Crimes Control Act, Cap. 200 R: E 2019. It was alleged that the applicants on unknown day of August, 2021 at Burigi Chatto National Park within Karagwe District in Kagera Region, did kill one Elephant valued at USD 15,000 which is equivalent to Tshs 34,275,000/= the property of the United Republic of Tanzania, without a valid hunting licence.

Both the applications were by way of a chamber summons supported by affidavit. Although filed separately, in the sense, Application No.1 of 2022 was filed by Ernest s/o Kanyabuligi @Mzee on 10th January 2022 while Application No.5 of 2022 was filed by the rest of the applicants on 19th

January 2022 but when the parties appeared before me for hearing, Mr. Amani Kilua learned State Attorney for the Republic/Respondent and Mr. Rogate Assey, learned advocate for the applicants notified the court that the two applications emanate from the same Economic case No.31 of 2021. Thus, it was proper and convenient that they be consolidated and considered together since the main prayer in both applications is bail pending trial of the said economic case.

In his oral submission, Mr. R. E. Assey prayed for the court to adopt his affidavit and form part of his submission. Mr. Assey submitted that the case facing the applicants is an economic case whose investigation is under way. He further submitted that, consent and certificate have not yet been filed in the Resident Magistrate Court, thus the said court has no jurisdiction over the matter. That under such a situation, it is only the High court that can grant bail since the offence is bailable.

The learned advocate reiterated that the applicants have permanent residence, immovable property, reliable sureties, and ready to abide by the bail conditions. He also urged the court to consider the principle of sharing since the applicants are many.

On his side Mr. Aman Kilua, learned State Attorney for the Republic did not object the application but urged the court to consider the dictates of Section 36 of the EOCCA.

This being an uncontested application, there are only three brief questions to consider and determine, namely whether the application is within the jurisdiction of this court; whether the applicants qualify for release on bail

and; if so, under what condition(s). Having examined the applications, the supporting documents and the submission by the counsels, I am fortified that the offence facing the applicants in Economic Crime Case No. 31 of 2021 before the Court of the Resident Magistrate of Bukoba at Bukoba is bailable but the application for bail could not be determined by the committal court because the value of the subject matter involved exceeded ten million (10,000,000/=), and that to date neither certificate conferring jurisdiction to the said court nor consent have been filed by the Director of Public Prosecutions (DPP) and the investigation is underway. Under such a situation, the court vested with jurisdiction to entertain and determine the application is the High Court.

Regarding the second question, since the applications were uncontested and no compelling reasons for denying the applicants to enjoy this constitutional right, the second question attracts a positive answer.

As for the 3rd question, section 36 of the EOCCA, prescribes mandatory conditions for bail and requires that when granting bail, the court should require the applicant to deposit cash equal to half the amount or value of the property involved or in the alternative, other property equivalent to half the amount or value of the property involved. Thus guided, and having answered the 1st and 2nd questions in the affirmative, and bearing in mind the principle of sharing, the application is hereby granted.

The principle of sharing was promulgated by the Court of Appeal of Tanzania in **Sylvester Hillu Dawi and Another versus DPP**, Criminal Appeal No. 250 of 2006.

It guides that, where two or more persons are charged with an offence of the nature mentioned above, then the amount to be deposited as bail condition shall be shared among the accused persons for purposes of bail.

It follows therefore that, by simple arithmetic, half of the amount involved in the charge sheet, that (Tshs. **34,275,000/=**) is Tshs 17,137,750/=

When one equally divides this amount to the four accused persons/applicants according to the above highlighted principle of sharing, each of them shall be required to deposit Tshs. **4,284,375/=**.

In the event, I accordingly order the applicants to be admitted to bail on the following conditions: -

- (1) That each applicant shall deposit cash Tshs. **4,284,375/=** or deposit to the custody of the court a title deed or evidence satisfactorily to prove existence of an immovable property whose value is not less than Tshs.4,284,375 /=. In case the applicants opt to deposit immovable property, valuation report is inevitable.
- (2) Each applicant shall have two reliable sureties with fixed abode in Kagera Region.
- (3) Each surety shall execute bail bond in the sum of Tshs. **2,200,000/=**.
- (4) Each surety shall produce an introductory letter from his employer or local authorities and a copy of recognized identity card.
- (5) Each applicant shall surrender his passport or any traveling document (if any) to the committal court.

- (6) The applicants shall not travel outside Kagera region without prior approval of the court.
- (7) Verification of sureties and bond documents to be executed by the Resident Magistrate In-charge at the Resident Magistrate Court of Bukoba at Bukoba.

It is so ordered




E.L. NGIGWANA

JUDGE

31/01/2022

Ruling delivered this 31st day of January, 2022 in the presence of all Applicants and their advocate Mr. Rogate Assey, Amani Kilua, learned State Attorney for the Respondent/ Republic, and Gosbert Rugaika, B/C.




E.L. NGIGWANA

JUDGE

31/01/2022