

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 93 OF 2022

JOSEPH JOHN MSAKI 1ST APPLICANT

GIFT MSAKI 2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

**(Arising from Economic Case No. 34 of 2022 pending before the
Resident Magistrate’s Court of Dar es Salaam at Kisutu)**

RULING

22nd and 22nd July, 2022

KISANYA, J.:

By chamber summons made under sections 29(4) and 36(1) of the Economic and Organized Crimes Control Act, Cap 200 R.E 2019 [now R.E. 2022 (henceforth “the EOCCA”), the applicants, Joseph John Msaki and Gift Msaki have moved this Court to grant them bail pending trial. Their application is supported by an affidavit sworn by their advocate one, Mr. Denis Jacob Julius.

It is gleaned from the supporting affidavit and the charge sheet appended thereto that, on 24th June, 2022, the applicants and one Constantine Roman (who is not a party to this application) were arraigned

before the Resident Magistrates' Court of Dar es Salaam at Kisutu in Economic Case No. 34 of 2022 for the four counts of fraudulent tax evasion, four counts of fraudulent use of electronic fiscal device and one counts of occasioning loss to a specified authority. The said offences are preferred under the relevant tax laws and the EOCCA. Since the offence laid against the applicant and the co-accused involves tax evasion to the tune of TZS 10,507,755,190, the applicants were inclined to file the present application for bail pending trial.

At the hearing of this application, the applicants appeared in person. They were also represented by Mr. Mussa Daffa, learned advocate holding brief for Mr. Denis Julius, learned advocate. On the other side, Ms. Nura Manja, learned State Attorney appeared for the respondent.

At the very outset, Ms Manja informed the Court the respondent had no objection to the application. In that regard, Mr. Daffa invited the Court to grant the reliefs prayed in the chamber summons.

Having gone through the chamber summons and affidavit and considered the submissions made by the learned counsel, I am inclined to determine whether to admit the applicants on bail pending trial.

First for consideration is the undisputed fact that the offences laid against the applicants and co-accused are bailable offences. I have considered further that the case laid against the applicant is at committal stage and that the value of tax evaded is more than three hundred million shillings. In that regard, I am satisfied that, this Court has jurisdiction to determine the present application under section 29(4)(d) of the EOCCA.

Next for consideration is the fact that this application is not contested by the prosecution/respondent. In other words, the prosecution is deemed to have agreed among other that the applicants will not interfere with the investigation and that they are entitled to bail. In the circumstances, it is clear that there is no reasons for not granting the application.

Last for consideration is the bail conditions to be imposed by the Court. This issue is taken care by section 36 (4), (5) and (6) of the EOCCA. One of the conditions requires that the applicant deposits to the court cash or other property equivalent to half of the amount or property involved and the rest secured by execution of a bond. The law is further settled that, where the case involves more than one accused person, the amount of money or value of property required to be deposited for bail

purposes is shared equally by the accused persons. [See the case of **Silvester Hillu Dawi and Another vs. DPP**, Criminal Appeal No. 250 of 2006, CAT, at Dar es Salaam (unreported)].

In view of the foregoing position, this Court (Kakolaki, J.) in **Constantine Roman vs R**, Misc. Criminal Application No. 88 of 2022 (unreported) granted bail to one of the applicants' co-accused (Constantine Roman). He was, among others, ordered to deposit a sum of TZS 1,751,292,531 in cash or title deed or evidence satisfactory to prove existence of immovable property/properties valued at TZS 1,751,292,531.

In the upshot of the above, I hereby grant the application. For purposes of consistence, both applicants are admitted to bail on the following conditions imposed to the applicants' co-accused in **Constantine Roman vs R** (supra): -

1. Each applicant shall deposit to the custody of the court a sum of a sum of TZS 1,751,292,531 in cash or title deed or evidence satisfactory to prove existence of immovable property/properties valued at TZS 1,751,292,531/=.
2. Each applicant shall have two reliable sureties with a fixed

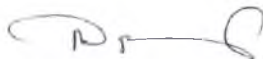
place of abode within Dar es Salaam Region.

3. Each surety shall execute a bond of TZS 875,646,000/=.
4. Each surety shall produce an introductory letter from his or her employer or local authorities and a copy of recognized identity card.
5. Each applicant shall surrender his passport or travelling document (if any).
6. Each applicant shall not travel outside Dar es Salaam Region without a prior written approval of the Resident Magistrate assigned with this case.

In the end, it is ordered verification of the sureties and bond documents shall be executed by the Resident Magistrate assigned with the case pending at the Resident Magistrate's Court of Dar es Salaam at Kisutu.

It is so ordered.

DATED at DAR ES SALAAM this 22nd day of July, 2022.



S.E. Kisanya
JUDGE

COURT: Ruling delivered this 22nd day of July, 2022 in the presence of the applicants, their counsel Mr. Mussa Daffa, learned advocate holding brief for Mr. Denis Julius, learned advocate and Ms. Nura Manja, learned State Attorney for the respondent.

Right of appeal explained.



S.E. Kisanya
JUDGE
22/07/2022