

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

**BUKOKA DISTRICT REGISTRY**

**AT BUKOKA**

**MISC. ECONOMIC APPLICATION NO. 03 OF 2022**

*(Arising from RM Economic Case No. 33 of 2021 of Bukoba Resident Magistrates' Court at Bukoba)*

**JASON S/O MUBIRIGI..... APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

28/01/2022 & 31/01/2022

**NGIGWANA, J.**

This application for bail pending trial has been lodged by the applicant Jason s/o Mubirigi through his advocate Mr. Aaron Kabunga. The applicant is an accused person in Economic Case No. 33 of 2021 pending in the resident Magistrates' Court of Bukoba at Bukoba. In the said case, the applicant stands charged with the offence of Unlawful Possession of Ammunition Contrary to Paragraph 21(a) of the Firearms and Ammunition Control Act Cap.200 R: E 2019 read together with Paragraph 31 of the First Schedule to and Section 57(1) and 60(2) of the Economic and Organized Crimes Control Act Cap. 200 R: E 2019. It is alleged that the accused/applicant on 13<sup>th</sup> day of November, 2021 at Nyakahanga area within Karagwe District in Kagera Region was found in possession of one bullet of rifle 235 without a valid license.

The application is brought 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 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. It is supported by an affidavit duly deposed Mr. Aaron Kabunga, the applicant's advocate, stating reasons why this application should be granted.

It was averred in the affidavit that, no certificate of Director of Public Prosecutions (DPP) conferring jurisdiction to the Resident Magistrate Court to try the said economic case neither is there a certificate of the DPP to consent for such prosecution, and no limit of time to exercise such powers as well as time to give consent for prosecution of such offence. That the counsel for the applicant has not prayed before the Resident Magistrates' Court to grant bail as it is not in its domain. That the High Court is the one conferred with jurisdiction on bail matters in economic cases where the charge is preferred under the Economic and Organized Crimes Control Act. That the applicant has reputable sureties to stand for bail and is ready to comply with bail conditions to be set by the court. That, the issue of bail pending trial is a Constitutional right to be enjoyed by the applicant since the offence against him is bailable.

The counter affidavit was duly filed by the respondent Republic. It was deposed by Mr. Amani Kilua, learned State Attorney. Generally, the application is not opposed by the respondent.

At the hearing, the applicant was present and represented by Aaron Kabunga, learned advocate while Mr. Amani Kilua, learned State Attorney appeared for the Republic.

In his oral submission, the learned advocate adopted the grounds averred in the affidavit in support of the application. He reiterated the reasons stated in the founding affidavit, and urged the court to grant the application.

On his side, Mr. Amani Kilua made no objection to the prayer but urged the court to comply with the law.

Having heard submissions of both sides, the issue for determination is whether the present application is meritorious or otherwise.

There is no doubt that matters relating to bail conditions in Economic cases are provided for under section 36 of the EOCCA. The accused/Applicant is required, among other things to deposit half of the amount of money involved or deposit title deed of the immovable property or such other evidence satisfactory to the court in proof of existence of the property.

In the present application, the value of the subject matter is not disclosed. Now, the question is whether this court can determine bail where the holding charge does not disclose the value of the property involved.

It is apparent that section 29(4) of the EOCCA does not state which court has jurisdiction to determine bail when the value of property involved is not disclosed. However, according to article 108 (2) of the Constitution of the United Republic of Tanzania 1977 as amended from time to time, the High court is vested with jurisdiction to determine any matter which the law

does not expressly provide which court has jurisdiction. The High Court (Mkeha J.) in the case of **Suleman Masoud Suleiman and Another versus Republic**, Criminal Application No. 10 of 2020 Shinyanga Registry (unreported) entertained an application involving a holding charge which had no value of the property and eventually, granted bail. I subscribe to this position considering the fact that bail is a constitutional right which the accused is entitled to enjoy unless there are compelling reasons both in law and facts for denying the same. I have as well considered the reasons stated in the founding affidavit but also oral submissions of both parties. Indeed, no compelling reasons both in law and facts for denying bail to the applicant.

In the event, the application is hereby granted. I therefore direct that the committal court to wit; Bukoba Resident Magistrates' Court of Bukoba at Bukoba vide the Resident Magistrate in-charge to admit the applicant on bail upon fulfilling the following conditions:

- (i) The applicant to sign bond of Tshs. **6,000,000/=**.
- (ii) The applicant to have two reliable sureties, residents of Kagera Region, each to sign bail bond of Tshs. **3,000,000/=**.
- (iii) The applicant to surrender his passport or any travel document (if any) to the committal court.
- (iv) Applicant shall not travel outside Kagera Region without leave of the court.
- (v) Each surety shall produce an introductory letter from his employer or local authorities and a copy of recognized identity card.

It is so ordered.



E.L. NGIGWANA

JUDGE

31/01/2022

Ruling delivered this 31<sup>st</sup> day of January, 2022 in the presence of the applicant and his advocate Mr. Frank Karoli, Amani Kilua, learned State Attorney for the Respondent/ Republic and Gosbert Rugaika, B/C.



E.L. NGIGWANA

JUDGE

31/01/2022

