

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO SUB-REGISTRY)**

AT MOROGORO

MISCELLANEOUS CRIMINAL APPLICATION NO. 15 OF 2021

(Originating from Economic Crime Case No. 10 of 2021 pending in the District Court of Morogoro at Morogoro)

MUHIDINI RASHIDI KIDUGILIKE APPLICANT

VERSUS

REPUBLIC RESPONDENT

R U L I N G

16th Dec, 2021 & 25th Jan, 2022

CHABA, J.

This ruling emanates from an application for bail pending trial brought under section 29 (4) (d) of The Economic and Organized Crimes Control Act [Cap. 200 R.E. 2019] (the EOCCA). The application was filed under certificate of urgency, preferred by way of chamber summons supported by the affidavit sworn on 10th December, 2021 by Mr. Daudi Clement Mkilya, learned advocate for the applicant.

In essence the applicant, MUHIDINI RASHIDI KIDUGILIKE is requesting this court to issue an order granting bail to him pending determination of his case which is registered as Economic Crime Case No. 10 of 2021 before the District Court of Morogoro, at Morogoro (the District Court).

From the affidavit, this court is informed that on 08/12/2021 the applicant was arraigned before the District Court for Unlawful possession

of Government trophies contrary to section 86 (2) (b) and (3) of the Wildlife Conservation Act No. 05 of 2009 read together with para 4 of the First Schedule, Section 57 (1) and 60 (2) of the the EOCCA, in Economic Crime Case No. 10 of 2021. The facts of the case reveal that, the applicant was found in possession of Government trophies, to wit two (2) pieces of Elephant tusks valued at Tanzanian Shillings 34,554,159/= the property of the Government of the United Republic of Tanzania without a permit from the Director of Wildlife which is above the jurisdiction of the District Court for bail purpose. However, so far no certificate has been filed by the Director of Public Prosecution (the DPP) to object the sought right to get bail.

During hearing of the instant application, Ms. Flora Masawe, learned Senior State Attorney entered appearance for the Respondent / Republic, whereas the applicant, appeared in person, unrepresented.

When the applicant was invited to argue his application, he briefly reiterated what is stated in the affidavit sworn by the learned advocate Mr. Daudi Clement Mkilya. He then prayed this court to grant him bail pending trial of his case before the District Court.

In reply, Ms. Masawe did not seek to oppose the applicant's application. She submitted that the DPP is yet to issue consent for trial of the case so pending before the District Court. However, she was of the opinion that, if the court will consider and grant bail to the applicant, then it should/must set reasonable bail conditions to ensure that the applicant/accused person will regularly attend the trial of his case without fail.

Having gone through the chamber summons, the affidavit and upon considered the submissions by both parties, it is apparent on record that the applicant is charged with the offence of unlawful possession of Government trophies contrary to section 86 (2) (b) and (3) of the Wildlife Conservation Act No. 05 of 2009 read together with para 4 of the First Schedule, section 57 (1) and 60 (2) of the EOCCA. No plea was taken as the District Court has no jurisdiction to determine bail application, hence this application. The law under section 29 (4) (d) of the EOCCA, excludes the District Court and the Court of Resident Magistrate's to grant bail to the accused person at any stage before commencement of the trial where the value is Ten Million Shillings or more. Indeed, such powers and jurisdiction to entertain the matter have been vested in the High Court.

It is a presumption of law that an accused person is presumed to be innocent until proved guilty by a court of competent jurisdiction and or until such accused pleads guilty to the charge voluntarily. This presumption is enshrined in Article 13 (6) (b) of the Constitution of the United Republic of Tanzania. And pursuant to the Bail Guidelines issued by the Judiciary of Tanzania in September, 2020 the word bail has been defined as a temporary release of an accused person awaiting trial or appeal on conditions stipulated by the court to guarantee his appearance in court. Therefore, bail is granted to an accused person to ensure that he/she appears to stand trial without the necessity of his being detained in custody in the meantime. The effect of bail is merely to release the accused from physical custody but he/she is still under the jurisdiction of the law and is bound to appear at the appointed time and place.

Now, the question for determination and consideration is whether or not the instant application is competent before this court and whether the applicant's application can be granted in the circumstance of this case.

Since the law is clear that in all cases where the value of any property involved in the offence charged is Ten Million Shillings or more, at any stage before commencement of the trial before the court, the only court which is vested with the powers and jurisdiction to determine issues of bail is the High Court and taking into account that bail is a constitutional right and upon scrutiny of the applicant's application, I am satisfied that the applicant has filed this application in line with the proper provisions of the law and I thus hold that this application is competent before this court. A number of decisions interpreting these provisions are available including the case of **DPP v. Aneth Makame**, Criminal Appeal No. 27 of 2018, CAT at DSM.

As to the question whether this court have powers and jurisdiction as well to admit the applicant or accused person to bail, I have indicated above that the law has vested this court with the powers and jurisdiction to entertain the matter where the value involved in the offence charged is Ten Million Shillings. However, it is a trite principle of law that such powers must be exercised judiciously, of course, depending on the circumstances of each case. I am aware that the rationale for remanding an accused person in prison is to assure his attendance to trial and that he/she will not escape or in any way defeat the due process of law. That is why, I think in my view that, the learned Senior State Attorney, first

did not oppose this application and secondly, she prayed and reminded this court to ensure that it sets reasonable bail conditions.

Under Section 36 (1) of the EOCCA, the law provides that after a person is charged but before he is convicted by the court, the court may on its own motion or **upon an application made by the accused person**, admit the applicant/accused person to bail subject to the conditions stipulated under sub-sections (2), (3), (4), (5) and (6) of section 36 of the EOCCA. However, for the purposes of this application, section 5 (a) – (d) is more relevant. Considering the facts that the learned Senior State Attorney conceded with applicant's application, I find no material facts that can rightly curtail the prayers sought by the applicant.

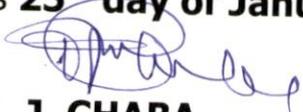
In the circumstance, I therefore grant the prayers sought by the applicant under the following bail conditions:

- (i) The applicant is required to deposit cash money to the court or other property equivalent to half the amount or value of actual money or property involved as stated in a charge sheet (Tanzanian Shillings 17, 277,080/= or above) and the rest to be secured by execution of a bond. If the property to be deposited is immovable, the applicant shall deposit the title deed whose property is within Morogoro Region and shall be accompanied by the valuation report made by the authorised valuers employed by the respective authority.
- (ii) The applicant shall have two reliable sureties whose fixed place of abode is within Morogoro Region which is the jurisdiction of this Court;
- (iii) Each surety shall execute a bond of Tanzanian Shillings 8,638,540/= and produce an introductory letter from his or her local

- authorities of the place of domicile with a copy of recognized identity card in particular National Identity Card or Voters Identity Card;
- (iv) That, the applicant shall surrender his passport and travelling documents (if any) to the police station as soon as practicable;
- (v) Movements of the applicant/accused person is hereby restricted only within the area of Morogoro Region; and
- (vi) Verification of the sureties and bond documents shall be executed by the District Court of Morogoro, at Morogoro and by the Resident Magistrate before whom the Economic Crime Case No. 10 of 2021 is pending.

That said and done, I order and direct that the trial magistrate (Hon. E. B. Ushacky, RM) to supervise the execution of bail conditions set herein above as soon as practicable. **Order accordingly.**

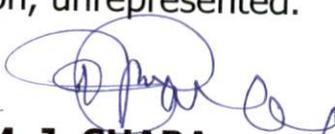
Dated at MOROGORO this 25th day of January, 2022.


M. J. CHABA

JUDGE

25/01/2022

Ruling delivered at my hand and the Seal of this Court in Chambers at Morogoro this 25th January, 2022 in the presence of Ms. Mary Lundu, State Attorney who represents the Respondent / Republic, and the applicant who appeared in person, unrepresented.


M. J. CHABA

JUDGE

25/01/2022

