

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOKA DISTRICT REGISTRY

AT BUKOKA

MISC. ECONOMIC APPLICATION NO. 06 OF 2022

(Arising from Economic Case No. 34 of 2021 at the Resident Magistrate's Court of Bukoba at Bukoba)

- 1. MSWADIKO S/O BIJUKA.....1ST APPLICANT**
2. SEVELIAN S/O BAKALWELA NYONGELA.....2ND APPLICANT
3. KABALINUS S/O ALFRED RWANGONGA.....3RD APPLICANT
4. TABU S/O SABASABA.....4TH APPLICANT
5. JASON GERVAS @ MBIRIGI.....5TH APPLICANT
6. COSMAS S/O CLEMENCE.....6TH APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

28/01/2022 & 31/01/2022

NGIGWANA, J.

This is an application for bail pending trial in an Economic Case No. 34 of 2021 before the Resident Magistrate Court of Bukoba at Bukoba. The applicants have moved this court by way of chamber summons supported by duly sworn affidavit by their advocate Mr. Rogate Eligi Assey. This application is made under Sections 29(4) and 36(1) and (7) of the Economic and organized Crimes Control Act Cap. 200 R:E 2019 (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.

On 13th day of December 2001, the applicants were arraigned before the resident Magistrates Court of Bukoba at Bukoba for two counts; first; Leading Organized Crimes Contrary to Paragraph 4 (1)a of the First Schedule 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 Kimisi area within Karagwe District in Kagera Region, willfully did organize and manage a criminal racket.

2nd count, Unlawful possession of Government Trophy Contrary to Section 86(1)(2)(b) 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 11th day of November, 2021 at Chabuhura Village within Karagwe District in Kagera region were found in possession of one piece of Elephant tusk valued at USD 15,000 equivalent to TZS. 34,275,000/= the property of the United of Republic of Tanzania without a permit from the Director of Wildlife.

Since the value of the Elephant tusk involved in the offence pending in the resident Magistrate Court of Bukoba at Bukoba is more than ten million shillings, the applicants have filed this application for bail pending trial.

In terms of the affidavit in support of the application, the applicants are ready to abide by the bail conditions and that, they are reliable persons with substantial properties, permanent residence and reliable sureties.

In that respect, they urged the court to admit them to bail pending trial. It is very important to note that the respondent (republic) filed the counter

affidavit, whereas the facts stated in the affidavit supporting the application were not at all disputed.

When this matter was called on for hearing, Mr. Rogate Eligi Assey, learned advocate appeared for the applicants while Amani Kilua, learned State Attorney appeared for the respondent/Republic.

In his oral submission, Mr. R. E. Assey prayed to the court to adopt his affidavit and form part 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 stated that, they have no objection to the application, however he urged the court to consider the dictates of Section 36 of the EOCCA.

Having heard the parties' submissions, the issue for determination is whether the application is meritorious or otherwise. There is no doubt that the value of the subject matter involved in the charge facing the applicants exceeds Tshs. 10,000,000/= (Ten million shillings). No doubt that the

power to consider and grant bail in respect of the offence is vested in the High Court since the offence is bailable. It should be noted that the main objective of remanding the accused person in custody is to ensure that he/she is present whenever required for trial or at the time of receiving the sentence that may be passed against him/her.

In that premise, the basic question in considering bail application is whether it is probable that the applicants will, if released, appear for trial up to the conclusion of the proceedings. The factors to be considered are, nature and seriousness of the offence, severity of punishment and whether the investigation will be interfered, to mention only a few.

In the present application, having considered the affidavit deposed by the applicants' advocate and oral submissions of both sides, it is my considered view and the interest of justice demands that this application be granted, however subject to the terms of Section 36 of the EOCCA, bearing in mind the principle of sharing.

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 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 17,137,500/=.

When one equally divides this amount to the six accused persons, each of them shall be required to deposit Tshs. 2,856,292/=.

In the event, the application for bail is hereby granted. I accordingly order the applicants to be admitted to bail on the following conditions:-

- (1) That each applicant shall deposit cash Tshs. 2,856,292/= or deposit to the custody of the court a title deed or evidence satisfactorily to prove existence of an immovable property valued at Tshs. 2,856,292/=. 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. 1,500,000/=.
- (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).
- (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 for Kagera Region 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 Republic, and Gosbert Rugaika, B/C.




E.L. NGIGWANA

JUDGE

31/01/2022