

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB-DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CRIMINAL APPLICATION NO. 104 OF 2022

(Arising from Economic Case No 41 of 2022 pending before the Magistrate Court of Dar es salaam at Kisutu)

JOHN SELESTINE MKAMBA.....1ST APPLICANT

EDES METHER HYERA.....2ND APPLICANT

SYLIDION ODILO.....3RD APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of last Order: 22/08/2022

Date of Ruling: 26/08/2022

E.E. KAKOLAKI J.

The applicants herein invited this court to consider and determine their application filed under certificate of urgency by way of chamber summons supported by an affidavit duly sworn by them jointly. The application is made pursuant to section 29(4)(d), 36(1) and 36(5) and (6) of the Economic and Organized Crimes Control Act, [Cap 200 R.E 2019] now [R.E 2022) to be referred to as EOCCA, read together with Section 149 of the Criminal Procedure Act, [Cap 20 R.E 2019] now [R.E 2022] and other relevant provisions of laws. They are praying this Court to grant them bail in respect of the charges faced in Economic Case No. 41 of 2022 pending before the

Resident Magistrates Court of Dar es salaam at Kisutu. When served with the chamber summons the respondent did not file the counter affidavit to contest the application.

The brief facts leading to this application as grasped from the affidavit and its annexed charge sheet goes thus, the applicants together with other twenty (20) persons not subject of this application are charged with three offences namely Conspiracy to Commit an Offence, Contrary to section 384 and Stealing, Contrary to sections 258(1) and 265 both of the Penal Code, [Cap. 16 R.E 2019] and Money Laundering, Contrary to sections 12(b) and 13(a) of the Anti-Money Laundering Act, [Cap. 423 R.E 2019] read together with paragraph 22 of the First Schedule to and section 57(1) and 60(2) of EOCCA. Amongst all twenty three (23) charged accused persons, only the applicants were exempted from the offence of Money Laundering. It is prosecution case against the applicants that, on diverse dates between 1st day of June, 2020 to 8th day of June 2020 at unknown place within the region of Dar es salaam, they jointly and together conspired to commit an offence to wit stealing and that, on 8th day of June 2020 at NMB Bank Mbezi Beach Branch within Kinondoni District in the Region of Dar es salaam, together with twenty others stole cash money amounting to Tanzania Shillings Seven

Hundred Eighty Million (TZS 780,000,000), the property of SGA cash in Transit (T) limited.

When the matter came for hearing applicants appeared unrepresented while the respondent enjoyed the services of Ms. Hellen Moshi, learned senior State Attorney. The applicants being unrepresented invited the Court to consider their application through their jointly filed affidavit and later on waited to hear from the respondent. Responding to the application Ms. Hellen informed the Court that, as per the charge sheet all two offences facing the applicants are bailable, hence the respondent is not contesting the applicants' prayer. She however invited the Court when considering bail conditions to be imposed to the applicants to be guided by the provision of section 148(5) Of the Criminal Procedure Act, [Cap 20 R.E 2022].

In their reply the applicants urged the Court to issue them with lenient bail conditions, given the fact that their prayer is uncontested by the applicant and that, they are ready to comply with them as they also have reliable sureties.

Having heard the parties and visited the joint affidavit by the applicants together with the attached copy of the charge sheet, this Court is satisfied

that the offences with which the applicants stand charged with are bailable and this Court is seized with jurisdiction to entertain the application as provided under section 29 (4) (d) of EOCCA. I say is clothed with jurisdiction as that provision empowers this Court to entertain bail in all cases where the accused is faced with economic and non-economic offences and at any stage before commencement of the trial before the Court as defined under EOCCA in as long as the property involved is of ten million shillings or more. Section 29(4)(d) provides that:

(4) After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purposes of this section the power to hear bail applications and grant bail-

(d) 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 is hereby vested in the High Court.

As alluded to above, Ms. Hellen Senior State Attorney reminded the Court when considering bail conditions to be invoked to the applicant to be guided with the provision of section 148(5)(e) of CPA. With due respect to the

learned Senior State Attorney I am not prepared to accept her invitation for one good reason that the law applicable for bail consideration at the moment where the accused is charged with non-economic offence of the property whose value is ten million shilling or more in Economic Case is EOCCA and not CPA, until when the provisions of section 29(4)(d) of EOCCA is amended.

Apart from the offences facing the applicants to be bailable, I have also considered the fact that the same have reliable sureties as already stated earlier that the accused charged offences are bailable, and the fact that bail is a matter of Constitutional right unless otherwise is lawfully curtailed as rightly stated by the Court of Appeal in the case of **Director of Public Prosecutor Vs. Daudi Pete** (1993) TLR 22. It is also uncontroverted fact that, the applicants are charged jointly and together with other twenty three accused persons as appearing in the charge sheet. This fact entitles them to benefit from the principle of sharing as rightly stated in the case of **Silvester Hillu Dawi & Another Vs. Director of Public Prosecutions**, Criminal Appeal 5 No. 250 of 2006 (CAT unreported). It is also settled law that in considering bail conditions in economic offences Courts have to be guided by the provision of section 36(5)(a)(b)(c)(d) and (6)(a)(b)(c) of the EOCCA.

All taken in to consideration this Court grants bail to the applicants on the following conditions:

1. Each applicant shall deposit to the custody of the court a sum of Tshs. 16,956,521.7/= in cash or tittle deed or evidence satisfactory to prove existence of immovable property/properties valued Tshs. 16,956,521.7.
2. Each applicant shall have two reliable sureties with fixed place of abode within Dar es Salaam Region.
3. Each surety shall execute a bond of Tshs. 8,478,260.87/=
4. Each surety shall produce an introductory letter from his or her employer or local authorities and a copy of office identity card or National identity card duly issued by NIDA.
5. Each applicant shall surrender his passport or travelling documents (if any).
6. Applicants shall attend in court on every date scheduled for their case.
7. During pendency of the case before the Resident Magistrate's Court of Dar es salaam at Kisutu, the applicants shall not travel outside Dar es Salaam Region without a prior written approval of the Resident Magistrate assigned with the case.

For purposes of convenience, sureties' verification and bond documents be executed by the Resident Magistrate assigned with the case pending before the Resident Magistrates Court of Dar es salaam at Kisutu.

It is so ordered.

Dated at Dar es salaam this 26th Day of August, 2022



E. E. KAKOLAKI

JUDGE

26/08/2022.

The Ruling has been delivered at Dar es Salaam today 26th day of August, 2022 in the presence of all three Applicants in person, Ms., State Attorney for the Respondent and Ms. Monica Msuya, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

26/08/2022.