

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)

AT DAR ES SALAAM

MISC. ECONOMIC CRIMES APPLICATIONS NO. 108 & 112 OF 2022

(Arising out of Economic Crime Case No. 43 of 2022 from the Resident Magistrates' Court of Dar es Salaam at Kisutu).

SIRAJI MIRAJI MTUNGULE 1ST APPLICANT

ELYASAU MUSSA MOHAMED 2ND APPLICANT

ELISHA DAMIAN NIMVULE 3RD APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

29th, & 31st August, 2022

ISMAIL, J.

The applicants together with two others, are charged with assorted counts of economic crimes which border on or relate to tax evasion. These offences fall under the Tax Administration Act, Cap. 438 R.E. 2019, and Regulations made thereunder. The total value of the subject matter of the charges is TZS. 8,681,535,718.40. There is also a count that falls under

Paragraph 10(1) 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.

The criminal proceedings that the applicants stand charged with are pending in the Resident Magistrates' Court of Dar es Salaam at Kisutu. In the pendency of the proceedings, the applicants have instituted the instant consolidated application, seeking the Court's indulgence in order to admit them to bail. While the offences are bailable, their decision to move to this Court is informed by the fact that the value of the subject matter is in excess of the sum which is within the subordinate court's cap of TZS. 10,000,000/-

The application has not been opposed to by the respondent. Ms. Nura Manja, learned State Attorney who represented the respondent urged the Court to consider the applicant's prayer favourably.

For their part, Messrs Mluge Fabian and Msafiri Mabera, learned counsel, urged the Court that, as it grants bail, it should consider other accused persons who are not part of the application. In addition, Mr. Mabera urged the Court to consider relaxing bail conditions as the Court did in the case of ***Nassib Mmbagga & 2 Others v. Republic***, HC-Misc. Criminal Application No. 187 of 2022 (unreported). In the said decision, the Court dispensed with some of the conditions set out in section 36 (4) (e) of Cap. 200.

The obvious question to be resolved is whether the application has met the threshold for its grant.

Reading from the provisions cited in the consolidated application, the obvious conclusion is that this application is meritorious, as the offences with which the accused are charged do not restrict granting of bail. The offences are bailable and the quantum involved means that determination of bail is a matter that can only be done by this Court. Clear, as well, is the fact these offences do not fall under the offences for which bail is restricted under section 36 (4) of Cap. 200. It is my conviction that this qualifies as a fit case in respect of which the Court's discretion to admit the applicants to bail may be exercised. Consequently, this application is granted and the applicants are admitted to bail.

As I accede to the applicants' prayer, I take cognizance of the prayer by counsel for the applicants, for imposition of terms which are lenient and, if possible, follow the path taken by the Court in ***Nassib Mmbagga's case*** (supra). Whilst the said decision represents an invaluable flexibility and the much needed relief to applicants of bail who often find themselves mired in the web of tough bail conditions, I take the view that my reading of conditions set in section 36 (5) and (6) of Cap. 200, avail me with little (if any) flexibility of juggling with the said terms. This is in view of the fact that

plausibility of the sum constituting the subject matter of the charge is in the remit of the trial court and not the Court whose powers are only restricted to consideration of bail, and nothing else. Punching holes in the charge is a subject for another day and before another forum. It is for that reason that I feel constrained to play the role of an adherent of what section 36 (5) and (6) of Cap. 200, provides.

In consequence thereof, I impose the following specific bail conditions and the applicants should cumulatively adhere to them:

1. The applicants shall deposit cash sums or title deeds for landed properties or properties approved or certified to have the value that is equivalent to a cumulative half of the value of the subject matter of the charge with which the applicant is charged. This works out to TZS. 4,340,767,859.2 which is to be shared by five accused persons. The portion for each accused person will be TZS. 868,153,571.8;
2. The applicants should produce two reliable sureties, each of whom shall execute a bond worth TZS 868,153,571.8;
3. The applicant shall avail themselves and appear in the trial court *i.e.* Resident Magistrates' Court of Dar es Salaam at Kisutu, whenever Economic Crime Case No. 43 of 2022 is called on for orders;

4. The applicants shall surrender their passports or other travel documents (if any) to the trial court, and that such document(s) shall remain in the court's custody for the entirety of the trial proceedings;
5. The trial magistrate, or any other magistrate acting on his behalf, shall verify and scrutinize bond documents, and any other documents, as submitted by the applicants and his sureties.

Order accordingly.

DATED at **DAR ES SALAAM** this 31st day of August, 2022.



M.K. ISMAIL

JUDGE

31.08.2022

