

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO. 33 OF 2022

*(Originating from Economic Case No. 15 of 2021 in the District Court of
Masasi at Masasi)*

HAMZA AFATI VAKINA @ MARADONA..... 1ST APPLICANT

YUSUPH HAMIS MAKUTI..... 2ND APPLICANT

JUMA GODFREY KIHUNGA..... 3RD APPLICANT

SWALEHE SALUM ISMAIL..... 4TH APPLICANT

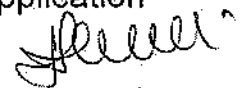
VERSUS

THE REPUBLICRESPONDENT

RULING

Muruke, J.

The four applicants' have filed present application for grant of bail pending trial in Economic case No. 15 of 2021 at the District Court of Masasi at Masasi. The applicants were arrested on 9th day of November, and arranged in court on 23rd November 2021. They were charged for an offence of unlawful possession of Government Trophy valued at Tanzania shillings two hundred nine million two hundred fifty thousand (TZS. 209, 250,000/=). Application is supported by an affidavits affirmed by themselves in which at paragraph 5 and 6 insist to comply with bail conditions, once bail is granted. Respondent did not file counter affidavit. On the date set for hearing, Wilbroard Ndunguru Senior State Attorney appeared for the respondent (Republic), while appellants appeared in persons. In his submission, respondent Counsel objected the application



that, this court lacks pecuniary jurisdiction to determine the application. He insisted that, there is amendment of written Laws (Misc. Amendment) Act No. 1 of 2022, which put very clear that, from 300,000 million Tsh lower courts are mandated to deal with bail application. Charge sheet and particulars of the offence set out the value of the Government Trophies to be **209,250,000**. Thus, the amount is within jurisdiction of the District court. Respondent counsel argued this court to struck out the application for bail.

It is a settled principle of law that, the question of jurisdiction of a court of law is so fundamental and that it can be raised at any time including at an appellate level. Any trial or proceeding by a court lacking requisite jurisdiction and try the matter will be declared a nullity on appeal or revision. Parties cannot confer jurisdiction to a court or tribunal that lacks jurisdiction. This position of law was insisted by East Africa Court of Appeal in the case of **Shyam Thanki and Others Vs. New Palace Hotel [1971]1 EA 199 at 202** that: -

"All the courts in Tanzania are created by statute and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot by consent give a court jurisdiction which it does not possess".

I totally, I agree that the issue of jurisdiction is a legal matter, it can be raised at any time. Respondent objected the application on the reason that, this court lacks pecuniary jurisdiction to determine this application which the value of the Government Trophies is two hundred nine million two hundred fifty thousand (T.sh. 209,250,000/=). The reasons for the applicants to file their application in this court is stated at paragraphs 3 and 4 of their affidavits as follows: -



3. That, when I was arraigned before the District Court of Masasi I pleaded not guilty and requested for bail but the respondent objected on the ground that the District Court of Masasi does not have jurisdiction to grant bail.

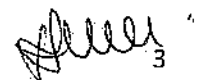
4. That, following such objection to my bail, the court ruled that it does not have such jurisdiction and informed me that this honourable court is vested with such jurisdiction.

According to the charge sheet, applicants are charged with an offence of unlawful possession of Government Trophy contrary to section 86(1) and (2)(c) (iii) of the Wildlife Conservation Act No. 2 of 2016 read together with paragraph 14 (d) of the first schedule to and section 57(1) and 60(2) of the Economic and Organised Crimes Control Act, valued at Tanzania shillings two hundred nine million two hundred fifty thousand (Tsh 209,250,000/=).

I have no doubt that, at the time applicant committed the offence in 2021, this court had jurisdiction to determine the application in terms of section 29(4)(d) and 36(1) of the Economic and Organized Crime Control Act, as amended by Act No.3 of 2016. However, there is an amendment of the law as rightly stated by learned State Attorney as follows:-

Section 35. the principal Act is amended in section 29(4) by deleting the words "ten million shillings" appearing in paragraph (a) and substituting for them the words "three hundred million shillings".

In simple language a newly amendment law, will affect the previous law on the issue of procedures unless the legislature directs otherwise. The Written Laws (Miscellaneous Amendment) Act No. 1 of 2022 amended section 29 of the Economic and Organized Crime Control Act, which vested power to the High Court to hear bail application in all cases where




the value of any property involved in the offence charged is ten million shillings or more to three hundred million shillings.

Issue of law acting retrospective was discussed by the Court of Appeal in the case of **The Director of Public Prosecutions Vs. Jackson Sifael Mtares and 3 others, Criminal Appeal No. 2 of 2018**(unreported) at Dar es salaam at page 30 court held that: -

"..... Thus, amendments in civil or criminal trial procedures, law of evidence and limitation etc., where they are merely the matters of procedure, will apply even to pending cases. Procedural amendments to a law, in the absence of anything contrary, are retrospective in the sense that they apply to all actions after the date they come into force even though the action may have begun earlier or the claim on which action may be based accrued on an anterior date. Where a procedural statute is passed for the purpose of supplying an omission in a former statute or for explaining a former statute, the subsequent statute relates back to the time when the prior statute was passed. All procedural laws are retrospective, unless the legislature expressly says they are not."


Being guided by the decision of the Court of Appeal cited above and the provision of the law cited above. I am in a settled mind that, this court lacks jurisdiction to hear this application, thus struck out. Applicant to file their application at the District court of Masasi. Application to be determined within 30 days from the date filed.

It is so ordered.


Z.G. Muruke
Judge
31/10/2022

Ruling delivered in the presence of Kigoryo learned State Attorney for the Respondent and applicants in persons.




Z.G. Muruke
Judge
31/10/2022