

**IN THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**DISTRICT REGISTRY OF MOROGORO**

**AT MOROGORO**

**MISC. CRIMINAL APPLICATION NO 46 OF 2022**

**(ORIGINATING FROM ECONOMIC CRIME CASE NO 26 OF 2022 – DISTRICT  
COURT MOROGORO)**

**BONI SULWA.....1<sup>ST</sup> APPLICANT**

**SEGAGI SAIDA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**RULING**

Date of Last order 14/12/2022

Date of ruling 16/12/2022

**MALATA, J**

This is an application for bail pending investigation in Economic Case no. 26/ 2022, the application is brought under section 29(4) of the Economic and Organised Crime Control Act, Cap 200 R.E 2022 seeking for orders,

**THAT;**

1. This honourable court be pleased to grant bail to the Applicants in regard to Economic Case No. 26 of 2022 pending at the Resident Magistrate Court of Morogoro upon the condition to be set by the Court.
2. Any other relief (s) Court may deem fit, just and equitable to grant.

The chamber summons is brought at the instance of the applicants and is supported by the Affidavit duly sworn by the Applicants' Advocate one Jovin Robert Manyama.

The respondent was served with the chamber summons and the accompanying affidavit but filed counter affidavit out of time granted by the court contravention the court's order which required them to file on 12/12/2022 but filed on 13/12/2022. Mr. Emmanuel learned State Attorney decided to withdraw the same. In the circumstance, the respondent argued the application based on points of law only.

During hearing, Mr. Jovin Manyama the learned Counsel submitted that, the matter is for bail pending investigation and determination of Economic Crime Case no. 26 of 2022, he prayed to adopt the affidavit in the support of an application. The applicants herein stand charged with three offences malicious damage to property and occasioning loss to a specified Government Authority contrary to paragraph 10(1) of the First schedule and Section 57(1), 60(2) of the Economic Organized Crime Control Act (Cap 200 R.E 2002).

These offences are all bailable but upon being granted by court. The alleged occasioned loss exceeds TZS 10 million of which fall within the jurisdiction of this court, thence this application.

In the present case, it is alleged that the applicants occasioning loss to specified authority by setting fire to the motor vehicle with registration number DFP 9402 made Toyota Landcruiser, GNSS receiver differential GPS and three Laptops thus causing, the United Republic of Tanzania to suffer pecuniary loss of TZS 454,200,000 being total value of all properties. The applicants are in remand custody pending completion of investigation and hearing of the alleged offence by the republic. That, since the offences are bailable, applicants came to this court seeking for bail pending completion of ongoing investigation and hearing processes of the aforesaid Economic case.

It is undisputed fact that, the applicants stand charged for inter alia, occasioning loss to specified authority which offence fall within the Economic and Organised Crime Control Act, Cap 200 R.E 2022.

In determining whether to grant or not bail pending investigation and trial, this court will be guided by Section 36 (4) (a)-(f) of the Economic and Organised Crime Control Act, Cap 200 R.E 2022 which provides that;

*The Court shall not admit any person to bail if-*

- (a) it appears to it that the accused person has previously been sentenced to imprisonment for a term exceeding three years;*
- (b) it appears to it that the accused person has previously been granted bail by a court and failed to comply with the conditions of the bail or absconded;*
- (c) the accused person is charged with an economic offence alleged to have been committed while he was released on bail by a court of law;*

- (d) *it appears to the court that it is necessary that the accused person be kept in custody for his own protection or safety;*
- (e) *the offence for which the person is charged involves property whose value exceeds ten million shillings, unless that person pays cash deposit equivalent to half the value of the property, and the rest is secured by execution of a bond;*
- (f) *if he is charged with an offence under the Drugs and prevention of illicit Traffic in drugs Act.*

Additionally, the court has to consider; **one**, whether the offence legally bailable, **two**, jurisdiction of the court, **three**, gravity of offence committed, **four**, likelihood of the accused interfering with investigation process while on bail, **five**, injuries and status of the victim, **six**, reliability of the sureties, **seven**, security of the accused if granted bail, **eight**, previous records of accused on bail conditions compliance, **nine**, uncalled for characteristic behaviour of the accused, **ten**, points raised for and against grant or not the bail.

It has been well cherished principle that an accused person is presumed to be innocent until the contrary is proved. In the case of **Patel vs. R** [1978] HCD, where by Biron J as he then, held inter alia that;

*"Man, whilst awaiting trial is of as right entitled to bail, as there is presumption of innocence until the contrary is proved. I would say that the court should be guided by four main principles on the granting of bail pending trial. The first and foremost is that the court should ask itself whether the accused will be available at the trial, secondly whether the accused is likely to commit further offence if he is allowed out on bail in which case his*

*character is certainly not irrelevant. Thirdly whether the accused is likely to interfere with the investigation by influencing witnesses or otherwise, and fourthly the gravity of the accusation and the severity of the punishment if conviction result."*

Having considered what is in the application before me and what the parties submitted, I am satisfied that, the applicants deserve nothing but to benefit from their application, since there is no shadow of doubt that, the applicants are eligible for grant of bail pending investigation and trial of their case. Consequently, I find the application praiseworthy and grant it accordingly.

Having granted the application, it follows therefore that, legally bail must be preceded with conditions. In the present case, the economic one, in imposing conditions, we are guided by section 36 (5) and (6) the Economic and Organised Crime Control Act, Cap 200 R.E 2022 which provide for mandatory and additional conditions for such bail.

Section 36 (5) provides that.

*Where the Court decides to admit an accused person to bail, it shall impose the following conditions on the bail, namely-*

*(a) where the offence with which the person is charged involves actual money or property whose value exceeds ten million shillings unless that person deposits cash or other property equivalent to half the amount or value of actual money or property involved and the rest is secured by execution of a bond;*

*Provided that, where the property to be deposited is immovable, it shall be sufficient to deposit the title deed, or if the title deed is not*

*available such other evidence as is satisfactory to the court in proof of existence of the property; save that this provision shall not apply in the case of police bail;*

*(b) appearance by the accused before the Court on a specified date at a specified time and place;*

*(c) surrender by the accused to the police of his passport or any other travel document; and*

*(d) restriction of the movement of the accused to the area of the town, village or other area of his residence.*

*(6) The Court may, in addition to the mandatory conditions prescribed in subsection (4) impose any one or more of the following conditions, namely-*

*(a) requiring the accused to report at specified intervals to a police station or other authority in his area of residence;*

*(b) requiring the accused to abstain from visiting a particular locality or premises, or association with certain specified persons;*

*(c) any other condition which the Court may deem fit to impose in addition to the preceding conditions, which appear to the Court to be likely to result in the appearance of the accused for the trial or resumed trial at the time and place required or*

*as may be necessary in the interest of justice or for the prevention of crime.*

Also, the case of **Director of Public Prosecutions v. Aneth John Makame, Criminal Appeal No. 127 of 2018, CAT (unreported)** emphasizes on the same principles. In economic cases one of the key factors is amount of money involved which play a key element in imposing bail conditions. Since the value of the properties is **TZS 454,200,000/=**, and stepping under section 36 (5) and (6) cited herein above, this bail is granted on the following conditions;


1. the applicants shall deposit cash in court as security **TZS 227,100,000/=** being half **TZS 454,200,000/=** involved in the offence each applicant shall deposit **TZS 113,550,000/=** alternatively each applicant shall deposit Title Deed of immovable properties of a value not less than **TZS 113,550,000/=** located in Morogoro Municipality or any other cities in Tanzania. In case the applicants decide to deposit Title Deed, they shall accompany with certified valuation report from the chief Government value confirmed the value of properties bearing the Title Deed;
2. Each applicant must provide two reliable sureties who are citizens of United Republic of Tanzania to execute two bonds valued at **TZS. 56,775,000/=** each who shall have letter from the Village Executive Office and Chairman of the respective village/street introducing them and their reliability;

3. The movement of the applicants shall be confined within Morogoro region and shall not go beyond without a written permission of the Resident Magistrate in Charge for Morogoro Resident Magistrate's Courts;
3. The applicants shall surrender their passports or any travelling document (if any) at Morogoro central Police station;
4. The applicants shall be required to report to Morogoro central Police station on 30<sup>th</sup> day of every month;
5. The applicants are mandatorily compelled to appear in court at any time when required to do including during hearing and final determination of the criminal case they stand charged;
6. Should the applicants breach any of the imposed bail condition, the bail shall be forthwith revoked and applicants shall be put into custody until final determination of the case.

The above conditions shall be verified by the Resident Magistrate in charge for Morogoro and upon full compliance to the satisfaction of the said Resident Magistrate release the applicants on bail.

It is accordingly ordered.



  
G.P. MALATA  
JUDGE  
16.10.2022