

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 175 OF 2022

(Arising out of Economic Case No. 70 of 2022 from the Resident Magistrates' Court of Dar es Salaam at Kisutu).

OLIVER LUCAS MCHUWA 1ST APPLICANT

HAIDARY OMARISHARIFU @ WHITE 2ND APPLICANT

JOYCE LAISON THOMAS 3RD APPLICANT

SALAMA AHMAD MASHAMU 4TH APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

14th, & 15th December, 2022

ISMAIL, J.

The applicants in this application are part of the seven accused persons who were arraigned in the Resident Magistrates' Court of Dar es Salaam at Kisutu, facing multiple counts of economic offences. They include unlawful dealing in trophies and unlawful possession of government trophy. The value of the subject matter in the charged offences is estimated to be TZS. 4,040,010,000/-.

As the trial proceedings await commencement, the applicants have moved to this Court, seeking to be admitted to bail. The view held by Mr. Nehemiah Geofrey Nkoko, the deponent of the supporting affidavit and counsel he represents, is that the offences the accused stand charged with are bailable, only that the value of the subject matter exceeds the trial court's pecuniary jurisdiction set out for the committal court. The cap set by law is TZS. 300,000,000/-, far less than TZS. 4,040,010,000/-, allegedly constituting the value of the trophies.

Mr. Nkoko has undertaken to ensure that the applicants meet bail conditions as set out in section 36 (5) of the Economic and Organized Crime Control Act, Cap. 200 R.E. 2022, and any other conditions as may be imposed by the Court.

Ms. Elizabeth Mkunde, Senior State Attorney, who represented the respondent in the matter, did not oppose the application. Whilst urging the Court to consider the application favourably, she implored the Court to ensure that it sets conditions which will compel the applicants to attend to their proceedings.

The issue to be resolved is whether the application has what it takes to be granted as prayed.

The answer to this question is in the affirmative. A glance at the application reveals that the supporting affidavit and a copy of the charge sheet bring out a unanimous view, which is that the offences with which the accused persons are charged are bailable. It is also clear that the quantum involved means that only the Court may determine the application and admit the applicants to bail. They are not offences for which bail is restricted under section 36 (4) of Cap. 200, or any other law. This, therefore, calls for exercise of the Court's discretion positively, in favour of the applicants.

Consequently, the applicants are admitted to bail subject to the following specific conditions:

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 applicants are charged. This works out to TZS. 2,020,005,000/-, which sum will to be shared equally amongst the seven accused persons. Each of the accused persons will bear the burden of TZS. 288,572,142.857;
2. The applicants should produce two reliable sureties, each of whom shall execute a bond worth TZS. 288,572,142.857;
3. The applicants shall avail themselves and appear in the trial court *i.e.* Resident Magistrates' Court of Dar es Salaam at Kisutu, each

time Economic Case No. 70 of 2022 is called on for orders and in the entirety of the pendency of the trial proceedings;

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 their sureties.

Order accordingly.

DATED at **DAR ES SALAAM** this 15th day of December, 2022.



M.K. ISMAIL

JUDGE

15.12.2022

