

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

CRIMINAL APPLICATION NO. 12 OF 2022

(Originating from consolidated Economic Application No. 2,3 and 14 of 2020 and Economic Case No. 14 of 2021 of the Resident Magistrate Court of Bukoba)

DIRECTOR OF PUBLIC PROSECUTIONS.....APPLICANT

VERSUS


**YASIR AZMI.....1ST RESPONDENT
RESPICIUS ABEL RUCHANGULA.....2ND RESPONDENT
AFIDHU ABDUL KALUGIRA.....3RD RESPONDENT**

RULING

03rd October & 07th October 2022

Kilekamajenga, J.

In this case, the first respondent was arraigned in the Resident Magistrates' Court of Bukoba for two counts namely, leading organised crime contrary to **paragraph 4(1)(a) of the First Schedule to and section 57(1) and 60(2) of the Economic and Organised Crime Control Act, Cap. 200 RE 2002;** and occasioning loss to a specified authority contrary to **paragraph 10(1) of the First Schedule to, and section 57(1) and 60(2) of the Economic and Organised Crime Control Act, Cap. 200 RE 2002.** It is alleged that, on divers dates, between October 2017 and December 2020, at different areas in Kagera Region, the first respondent, together with other twelve accused persons, did wilfully organise a criminal racket intending to cause loss amounting to Tshs. 2,159,576,500/= to Nakuroi Investment Company Limited. When the matter was



still under committal processes in the Resident Magistrates' Court, the first respondent together with other ten accused person, moved this Honourable Court with an application for bail through Consolidated Misc. Criminal Economic Applications Nos. 2,3 & 7 of 2020. Bail, being a constitutional right in Tanzania, and as the offence was bailable, this court granted bail under the following conditions:

- 1. Each applicant to surrender his passport or any other travelling document, if any, to the Regional Crimes Officer, Kagera Region;*
- 2. Each applicant shall report to the Resident Magistrate in charge of the Resident Magistrates' Court in their respective regions of residence once in every last Monday of a month and sign a specific register, if need be, viz, Dar es salaam for the First, Third, Seventh and Eighth Applicants; Arusha for the Second, and Ninth Applicants; Mbeya for the Fourth Applicant; Kagera for the Fifth and Tenth Applicants; and Dodoma for the eleventh applicant;*
- 3. Each applicant shall not travel out of his respective region of residence without prior written leave of the Resident Magistrate in charge of the Magistrates' Court of the Region;*
- 4. Each applicant should have two sureties, and one must be employee of the government, local government, government agency, or any other organisation recognised under the law and must be resident within the United Republic of Tanzania;*
- 5. Each applicant's sureties should submit letters and certified copies of Identity cards from their respective employers;*
- 6. Each applicant's sureties should produce in court letter of introduction from their respective street or village chairman;*

7. *Each applicant must enter appearance in court on every date when the case is scheduled for mention, hearing or any other order or direction of the court;*
8. *Each applicant's sureties shall undertake to make sure that his applicant is available and enter appearance in court whenever required;*
9. *Each applicant shall deposit cash in sum Tanzania Shillings on Hundred Million Only (1,000,000,000/=) or in alternative to deposit immovable property equivalent to Tanzania Shillings One Hundred Million Only (100,000,000/=); in case any of the applicants decide to deposit immovable property, he shall deposit title deed supported by Valuation Report from the Government Valuer;*
10. *Each applicant's sureties must sign a bond of sum of Tanzania Shillings Fifty Million Only (50,000,000/=) as a security for appearance of the respective applicant in court; and*
11. *The above ordered bail conditions shall be supervised and sureties certified by the Deputy Registrar of this Court.*

Soon after the above conditions of bail, the first respondent deposited a title deed of Plot No. 3 Block B at Buhembe within Bukoba Municipality. The second and second respondents, each of them, signed a bond of Tshs. 50,000,000/= guaranteeing the appearance of the first respondent in court. However, it is very unfortunate that the first respondent, soon after being bailed out, he disappeared and has never appeared for trial. The Director of Public Prosecutions, thereafter, lodged the instant application under certificate of urgency praying for the following orders:

1. *That, the immutable property (sic) located at Plot No. 3 Block B at Buhembe area within Bukoba Municipality of which the titled deed (sic)*

deposited by the 1st Respondent in this Court to secure his bail be confiscated by attachment and sale and the proceed be deposited in the government account.

- 2. That, the 2nd and 3^d respondent be ordered to pay sum of Tanzania Shillings fifty million only (TZS 50,000,000/=) each as bond failure to secure attendance of the 1st respondent in the Resident Magistrate's Court of Bukoba at Bukoba the original case is pending.*
- 3. That, the 2nd and 3^d respondent be ordered to save in jail for as per law for failure to adhere the order of the court.*
- 4. That, any other under (sic) Honourable court may deem fit and just to grant.*

The instant application was made under **section 159, 160(1)(2)(3)(4) and 392A of the Criminal Procedure Act, Cap. 20 RE 2019** and **section 28 of the Economic and Organised Crimes Control Act, Cap. 200 RE 2019**. The same was supported with an affidavit deposed by the learned State Attorney, Mr. Juma Mahona Ngassa. In response, the second and third respondent filed a counter affidavit resisting the application. This court finally ordered the hearing of the application to proceed in absence of the first respondent after complying with the order of the court to publish the summons in the Newspaper.

Before this court, the applicant was represented by the learned Senior State Attorney, Mr. Robert Kidandu. The second respondent appeared in person and without representation whereas the third respondent was present and also enjoyed the legal services of the learned advocate, Mr. Gerase Reuben. Mr. Kidandu for the respondent prayed for the forfeiture of the immovable property

located on Plot No. 3 Block B at Buhembe area within Bukoba Municipality which was deposited by the first respondent in this court as security for bail in Economic Case No. 14 of 2021 which is pending in the Resident Magistrates' Court of Bukoba. He also prayed for the order of this court to compel the second and third respondent to pay Tshs. 50,000,000/= as bond signed to guarantee the appearance of the first respondent for trial.

He further argued that, the first respondent stand charged with the offence of occasioning loss at the tune of Tshs. 2,159,576,500/= and he was granted bail by this court. The first respondent complied with the bail conditions by depositing the said title deed. The second and second respondents stood as his sureties and each of them signed a bond of Tshs. 50,000,000/=. Thereafter, the first respondent jumped bail; the second and third respondent have failed to secure the first respondent's attendance for trial of the main case.

On his side, Mr. Reuben for the third respondent objected the prayer to forfeit the immovable property deposited as security unless there are strong reasons to do so because the case is still pending before the Resident Magistrates Court of Bukoba. The applicant was supposed to confer jurisdiction to the Resident Magistrates' Court for the trial to commence instead of rushing to forfeit the security. He contended that, the Economic Case No. 14 of 2021 is under investigation, and the immovable property on the said title deed is worth more than hundred million Tanzania Shillings. The forfeiture and sell of the security

will lead to injustice and even prejudice the respondents. The counsel further prayed for the second and third respondents to be given time to procure the attendance of the first respondent instead of forfeiting the security and order the deposit of the money as security. Mr. Reuben was of the view that, the application was pre-maturely filed before this Court.

When invited for a response, the second respondent who was unrepresented simply urged the court to exercise its discretion on this matter.

When rejoining, the learned State Attorney stated that, as long as the first respondent violated bail conditions, the applicant was obliged to apply for forfeiture of the deposited property. The certificate to confer jurisdiction to the Resident Magistrates' Court has nothing to do with bail condition. It is also crystal clear that, the first respondent jumped bail and the second and third respondent have failed to secure him for trial.

In deciding this matter, I have taken into consideration that bail is the constitutional right of an accused person which derives from the doctrine of presumption of innocence. Under **Article 13(6)(b) of our Constitution of 1977**, a person is presumed innocent until proved guilty by a competent court. The Article provides that:

'no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence.'

Based on the above provision of the constitution, an accused, unless committed a non-bailable offence, should be admitted on bail while waiting trial of the case. See, **section 148 of the Criminal Procedure Act, Cap. 20 RE 2019**. The history of bail dates back in medieval England. When prisons experienced the rise of contagious diseases and the trial of cases delayed due to traveling justice, it was necessary to bail out prisoners' pending the hearing of their cases. It became inevitable to relieve remandee from disease-ridden jails under the condition that they will appear in court for trial. Prisoners were bailed by a third person who accepted responsibility of producing the prisoner during the trial. Such a guarantor was supposed to be a person of reputation with capacity to post money bond or property for the prisoner's bail. The guarantor's property or money deposited could be forfeited in case the prisoner failed to attend the trial. See, **Takwani 'Criminal Procedure' 3rd Edition, 2011 at 144**. This bail practice found its way into the modern criminal law jurisprudence.

Currently, every accused person has the right to bail unless the offence against him or her is non-bailable. The conditions of bail may vary depending on the nature and gravity of the offence. Therefore, bail is a matter of right if the offence is bailable. The essence of arresting a suspect and commit him/her to custody is just to ensure his presence during the trial. In case, he/she is found guilty of the offence charged, he should be punished. The detention of an accused is not a punishment but to ensure that he/she will appear for the trial.

Also, the object of bail is just to ensure that the accused person appears to answer the charge and take the responsibility in case of a guilty verdict. It follows therefore that, the accused person in custody may be bailed upon depositing security or with the bond the bond signed by sureties. The jurisprudence on the law of bail has advanced further to allow the accused person to provide his own guarantee by depositing money bond or property. The rationale behind having sureties and furnishing bond is to ensure that the accused person appears in court for trial. Failure on the part of the bailed accused to appear warrants the property deposited as security to be forfeited. Section 159 of the Criminal Procedure Act, Cap. 20 RE 2019 has captured this doctrine thus:

159. Where a person absconds while he is on bail or, not being on bail, fails to appear before the court on the date fixed and conceals himself so that a warrant of arrest may not be executed-

"(a) such of his property, movable or immovable, as is commensurate to the monetary value of any property involved in the case may be confiscated by attachment; and (b) the trial in respect of that person shall continue irrespective of the stage of the trial when the accused absconds, after sufficient efforts have been made to trace him and compel his attendance."
(Emphasis added).

In this case, the first respondent deposited a title deed as a security for his bail. Also, the second and third respondents, each of them, signed bond of Tshs. 50,000,000/= as a security that the first respondent will appear before the court

for trial. Immediately after complying with the required bail conditions, the first respondent was granted bail. However, he has never appeared in court for trial and his whereabouts is not known. The second and third respondents have also failed to secure the attendance of the first respondent despite several adjournments of the case. As a matter of law, their guarantee was to ensure that the first respondent appears in court for trial and not otherwise. The title deed together with the bond signed by the third respondent were not mean to cover the value of the case facing the first respondent but a mere security that the first respondent will attend trial of case. In line with **section 159 of the Criminal Procedure Act**, the bonded property and money may be forfeited if the accused fails to appear for the trial. In this case, it is evident that, the second and third respondents are unable to secure the first respondent for trial. For, that reason therefore, the deposited property suffers the consequences of being forfeited.

Based on the above reasoning, this court orders the following:

1. The second and third respondents are given one month from today to secure the attendance of the first respondent.
2. In case they fail to secure the first respondent for the trial within one month, the following orders shall immediately take effect.
 - a. The immovable property deposited by the first respondent as security shall be forfeited;

- b. The second respondent shall be liable to pay Tshs. 50,000,000/= being the amount of money specified in the bond signed as the security for the first respondent's attendance in court;
- c. The third respondent shall be liable to pay Tshs. 50,000,000/= being the amount of money specified in the bond signed as the security for the first respondent's attendance in court.

Order accordingly.

DATED at BUKOBA this 07th day of October, 2022.



Ntemi N. Kilekamajenga.
JUDGE
07/10/2022

Court:

Ruling delivered this 07th October 2022 in the presence of the learned Senior State Attorney, Mr. Emmanuel Luvunga; the third respondent and his counsel, Mr. Gerase Reuben and the second respondent present in person. Right of appeal explained.



Ntemi N. Kilekamajenga.
JUDGE
07/10/2022