

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

MISC. ECONOMIC APPLICATION NO. 02 OF 2022

(Arising from Economic Crime Case No. 14 of 2021 at Resident Magistrate's Court of Bukoba at Bukoba)

LOTANG'AMWAKI MILANYI..... APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

03/02/2022 & 04/02/2022
NGIGWANA, J.

The applicant Lotang'amwaki s/o Milanyi and 12 Others have been jointly and together charged before the resident Magistrates' Court of Bukoba at Bukoba in Economic Crime Case No. 14 of 2021 with two counts; first, Leading Organized Crime contrary to paragraph 4 (1) (a) of the First Schedule to and Section 57(1) and 60 (2) of the Economic and Organized Crimes Control Act Cap. 200 R: E 2019. It is alleged that the accused person now applicant and 12 others on divers dates between October, 2017 and December, 2020 at different areas in Kagera Region, willfully organized a crime racket intending to occasion loss to a specified authority to wit; **NAKUROI INVESTMENT COMPANY LIMITED.**

2nd count, 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 Organized Crimes Control Act Cap. 200 R: E 2019.

It is alleged that the applicant and 12 others on divers dates between October, 2017 and December 2020 at different areas in Kagera Region, by willful act, caused **NAKUROI INVESTMENT COMPANY LIMITED** to suffer a pecuniary loss amounting to Tanzania Shillings Two Billion One Hundred Fifty nine Million Five Hundred Thousand Seventy Six Thousand and five Hundred only (**TZS 2,159,576,500/=**).

Since, the resident Magistrate Court of Bukoba at Bukoba where the charge has been instituted against the applicant and 12 others has no jurisdiction over economic crimes including the present one, the present application had been properly filed before this court.

The Applicant chamber application for bail is made under section 29(4)(d) and 36(1) and (7) of the Economic and Organized Crimes Control Act Cap. 200 R: E 2019 read together with Section 392 of the Criminal Procedure Act Cap. 20 R: E 2019 as amended by Section 24 of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2011, supported by the affidavit deposed by Anesius Stewart, learned advocate for the Applicant.

The said affidavit gives the back ground and reasons for the application, in paragraphs 1, 2, 3, 4, 5, 6, and 7 respectively that the applicant is charged together with 12 others with an economic case which isailable. That the applicant is a trust worthy person ready to abide with bail conditions, and above all, has reliable sureties ready to abide with bail conditions and orders as shall be set by this court. That on the balance of convenience, the applicant stands to suffer irreparable loss if an order as to bail will not be granted to him.

When the application was called on for hearing this 3rd day of February, 2022, the applicant was advocated by Mr. Anesius Stewart while the

Respondent/Republic was represented by Mr. Amani Kilua, learned State Attorney. The Respondent neither filed the counter affidavit nor contested the application.

In his brief oral submission, Mr. Stewart reiterated the reasons stated in the affidavit while Amani Kilua urged the court to comply with the dictates of section 36 of EOCCA.

It is the clear position of the law in our jurisdiction that bail is both a statutory and constitutional right for an accused unless there are express provisions of law or compelling reasons to deny the same. The rationale of granting bail to an accused person is to let him/her enjoy his/her freedom so long as he/she shall appear in court for his/her trial. See the case of **Hassan Othman Hassn @Hasanoo versus Republic**, Criminal Appeal No. 193 of 2014 CAT – DSM (unreported).

In the instant application, since the applicant has been charged with a bailable offence, and that the application has not been contested by the Respondent/Republic, and since no compelling meritorious reasons for the court to decline the application, this application for bail pending trial (if any) of the Economic Case is meritorious.

In Economic Crime Case No. 14 of 2021, accused persons are 13 in number, thus the principle of “**sharing**” must come into play. See the case of **Sylvester Hillu Dawi and another versus Director of Public Prosecutions (DPP)**, Civil Appeal No. 250 of 2006 CAT (unreported).

The principle guides that, where two or more persons are charged with an offence of the nature named herein above, then the amount to be deposited shall be shared among the accused persons for purposes of bail.

The law requires the applicant to deposit half of the amount value of the subject matter. It follows that, by simple arithmetic, half of the amount involved in the charge sheet, that is to say TZS. **2,159,7576,500/=**) is TZS. **1,079,788,250/=**.

When such amount is divided to all 13 accused persons according to the above highlighted principle, each of them shall be required to deposit **TZS. 83,060,635/=**.

In that premise, I grant bail to the applicant on the following conditions;

- (1) That the applicant shall deposit cash **TZS. 83,060,635/=** or deposit to the custody of the court a Title deed or evidence satisfactorily to prove existence of an immovable property whose value is not less than **TZS. 83,060,635/=**. In case the applicant decides to deposit immovable property, the Title deed or evidence must be accompanied by valuation Report from the Government Valuer.
- (2) The applicant must have two reliable sureties of which one must be a Government Employee or an employee of any Recognized and Reputable Organization.
- (3) Each surety shall execute bail bond in the sum of Tshs. **41,530,318/=**.
- (4) Each surety shall produce an introductory letter from his employer or local authorities and copy of recognized identity card.

- (5) Applicant shall surrender his passport or any travelling document (if any).
- (6) The Applicant shall not travel outside Kagera Region without prior written leave of the Resident Magistrate In-charge of the Magistrates' Court of Bukoba at Bukoba.
- (7) Where the written leave is given, the applicant shall report to the Resident Magistrate In-charge of the Resident Magistrates' Court of Arusha or any other region as the case may be, once per month and sign a specific register.
- (8) Verification of sureties and bond documents to be executed by the Deputy Registrar of this court.

It is so ordered.




E.L. NGIGWANA

JUDGE

04/02/2022

Ruling delivered this 4th day of February, 2022 in the presence of the applicant in person, Amani Kilua, learned State Attorney for the Republic, Mr. E. M. Kamaleki, Judges' Law Assistant and Gosbert Rugaika B/C.




E.L. NGIGWANA

JUDGE

04/02/2022