

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOKA DISTRICT REGISTRY

AT BUKOKA

MISC. ECONOMIC APPLICATION NO. 04 OF 2022

(Arising from Economic Crime Case No. 32 of 2021 of 2021 at Resident Magistrate Court of Bukoba at Bukoba)

JOHN S/O PAUL..... APPLICANT

VERSUS

REPULIC RESPONDENT

RULING

08/02/2022 & 09/02/2022

NGIGWANA, J.

The applicant named above has brought this application under the provisions of section 29(4) 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 for the orders that this honorable court be pleased to release the applicant on bail pending trial (if any) of Economic Crime Case No. 32 of 2021 in the Resident Magistrate Court of Bukoba at Bukoba.

The application is supported by the affidavit deposed Rogate Eligi Assey, learned advocate for the applicant. Mr. Assey prayed to the court to adopt his affidavit and form part of his submission. In his oral submission, he submitted that the offence to which the applicant stand charged is a

bailable offence, that only the High Court is vested with jurisdiction to hear and determine economic cases unless the Director of Public Prosecutions (DPP) consents and confers jurisdiction to the lower court, something which had not been done in the case at hand, but also the value involved exceeded 10,000,000/=. That the applicant is a trustworthy person hence ready to abide with bail conditions to be set by the court, but also has reliable sureties who are ready to abide with the bail conditions. That, the release of the applicant on bail will not prejudice the interest of the Republic/Respondent, and if any order as to bail will not be granted, the applicant stands to suffer irreparable loss.

The respondent, on the other hand, being represented by Amani Kilua, learned State Attorney filed the counter affidavit, but no objection specifically raised as to bail, however, he urged the court to impose bail conditions as per Section 36 of the EOCCA, bearing in mind seriousness of the offence to wit; second count.

Now, the issue for determination is whether this application is meritorious or otherwise.

Before the Resident Magistrate Court of Bukoba at Bukoba the applicant stands charged with two counts, first being Unlawful Possession of Government Trophy contrary to Section 86 (1) and (2) (C) (iii) the Wildlife Conservation Act No. 5 of 2009 read together with Paragraph 14 of the First Schedule to Section 57 (1) and 60(2) of the EOCCA, Cap. 200 R: E 2019.

It is alleged that the applicant on 13th day of November, 2021 at Kanonge Village within Karagwe District in Kagera region was found in unlawful possession of 24 Molars and Premolars of Elephant, four (4) pieces of Elephant Jaw and small pieces of elephant teeth all valued at Tshs. 34,275,000/= the property of the United Republic of Tanzania.

2nd count, Unlawful presence within the United Republic of Tanzania Contrary to Section 45(1) and (i) and 2(C) of the Immigration Act Cap. 54 R: E 2016.

It is alleged that on 13th day of November, 2021 at Kanonge Village within Karagwe district in Kagera Region being a Rwandese was found present within the United Republic of Tanzania without any document authorized him to be present.

There is no doubt that in the present application, the value involved in the charge sheet in Tshs. 34,275,000/=-, and that consent and certificate have not yet been filed to the Resident Magistrate Court of Bukoba by the Director of Public Prosecutions (DPP), thus it is obvious that an application for bail could not be entertained by the said court.

It is a principle of law that a person is presumed innocent until proved guilty by a competent court with competent jurisdiction and or until such accused pleads guilty to the charge voluntarily. Bail is granted to an accused person to ensure that he appears to stand trial without the necessity of him being detained in custody in the meantime.

Indeed, the effect of bail is to release the accused from physical custody but he is still under the jurisdiction of the law and is bound to appear at the specified date, time and place.

Taking into account the affidavit in support of the application, oral submissions by the learned counsel for the applicant but also the counter affidavit and oral submissions by Mr. Amani Kilua, the learned State Attorney for the Republic, I find no compelling or justifiable reasons to decline granting this application.

Being guided by the above principle of Law and Section 36 of EOCCA the EOCCA, I hereby grant the sought bail on the following conditions: -

- (i) Applicant shall deposit cash **TZS.17,137,500/=** or deposit to the custody of the court a Title Deed or evidence satisfactorily to prove existence of an immovable property whose value is TZS **17,137,500/=** or above, accompanied by Valuation Report of the Government Valuer.
- (ii) Applicant must have two reliable sureties, with fixed abode in Kagera Region, each to sign a bail bond of **TZS. 8,568,750/=**.
- (iii) Each surety shall produce an introductory letter from his employer or local authorities and a copy of recognized identity card.
- (iv) Applicant shall surrender his passport or any travelling document (if any) to the committal court.

- (v) That the applicant shall appear before the lower court on specified dates, time and place, and shall not travel outside Kagera Region without a written leave of the committal court.

- (vi) Verification of sureties and bond documents shall be effected by the Resident Magistrate in-charge of Bukoba resident Magistrate Court at Bukoba.

It is so ordered.




E.L. NGIGWANA

JUDGE

09/02/2022

Ruling delivered this 9th day February, 2022 in the presence of the applicant and his advocate, Mr. Rogate Assey, Mr. Amani Kilua, learned State Attorney for the Republic, E. M. Kamaleki, Judges' Law Assistant and Grace Mtoka, B/C.




E.L. NGIGWANA

JUDGE

09/02/2022