

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MWANZA
AT MWANZA
CONSOLIDATED MISC. CRIMINAL APPLICATIONS NO. 5 of 2022 and 6
of 2022**

**(Arising from Economic Crimes Case No. 04/2022 in the Resident
Magistrate Court of Mwanza)**

AGAI BENJAMINI.....1st APPLICANT

SAMWEL CHRISTOPHER RICHARD.....2nd APPLICANT

PAULO SOSTHENES MALALA.....3rd APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

22 & 23 February 2022

Itemba, J.

Agai Benjamin, Samwel Richard and Paulo Sosthenes Malala, the 1st, 2nd and 3rd applicants respectively, stand charged before the Resident Magistrate's Court of Mwanza in Economic Crime Case No. 4 of 2022.

As per the charge sheet, the 1st and 3rd applicants are charged with the offence of **Abuse of Position** contrary to section 31 of the Prevention and Combating of Corruption Act, [Cap 329 R.E 2019] read together with Paragraph 14 of the First schedule to, Section 57(1) and Section 60(2) of the Economic and Organized Crime Control Act (Cap 200 R.E 2019), herein Cap 200. The 2nd applicant is charged with the offences of **Obtaining Money by False Pretence** contrary to section 301 and 302 of the Penal Code and

Occasioning Loss to a Specified Authority contrary to paragraph 10 of the First schedule to, Section 57(1) and Section 60(2) of Cap 200.

It is alleged that the 3rd applicant being an employee of Buchosa District Council as a District Executive Director, he intentionally abused his position by acting contrary to the established guidelines and he authorized the sum of Tanzanian shillings Seventy-Six Million Eight Hundred Ninety Eight Thousand Five hundred Fifty Five (**Tshs. 76,898,585**) to RESA ROOFERS LTD who did not deliver iron sheets and roofing nails for constructions of classes and teacher's offices. The 1st applicant being an employee of the same district as a Head of Procurement Department, he intentionally abused his position by acting contrary to the established guidelines, as a result he authorized RESA ROOFERS LTD to supply construction building materials for primary and secondary schools within Buchosa District Council without having a capacity to deliver the said consignment within time.

It is further alleged that the 2nd applicant trading in the name of RESA ROOFERS LTD, by false pretence and with intent to defraud obtained Tanzanian shillings Seventy-Six Million Eight Hundred Ninety Eight Thousand Five hundred Fifty Five (**Tshs. 76,898,585**) from Buchosa District council

purporting that they will supply construction building material namely 2058 iron sheets and 720 kilograms of roofing nails whilst knowing that they are not capable of such suppliance; consequently, the 2nd applicant caused Buchosa District Council to suffer a loss of the same amount.

On 17th of February 2022 under the Certificate of Urgency, the 1st and 2nd applicants, filed this application for bail no 5/2022. On 18th of February the 3rd applicant, filed an application no. 6/2022. The 2 applications were consolidated as they emanate from the same Economic Crimes Case no. 4 of 2022 and the Resident Magistrate's Court of Mwanza.

At the hearing, all applicants were present. The 1st 2nd and 3rd applicants were represented by advocate Paul Kipeja, Pascali Joseph and Emmanuel Muyenji respectively. Mr Kipeja argued for the 1st and 2nd applicants. He prayed for the affidavit deponed by Ms Scholastica Teffe, in support of the application to be adopted. He briefly stated that the offences which the applicants are charged with are bailable, and the value of the offence against the applicant is above Tanzanian shillings ten million, therefore this court has jurisdiction. He added that the applicants have reliable sureties and the 1st applicant is the government employee hence his particulars are easily available.

Submitting for the 3rd applicant Mr. Emanuel was not far from the counsel for the 1st and 2nd applicants. After praying for the affidavit of Mr. Godfrey Goyayi in support of application to be adopted, he argued that the offences against the 3rd applicant are bailable and the applicant has reputable sureties. That the applicant is a government employee hence he cannot easily jump bail.

The application was not contested by the respondent. The learned state attorney Ms Gisela Alex, urged the Court to set bail conditions which will ensure applicants' availability before the court, throughout the hearing. Mr. Kipeja was inquired by the Court as regard his citation of enabling provisions in the Chamber Summons. He explained that there was an oversight in the said citation. Upon being granted leave to amend the Chamber Summons, he prayed to omit section 148(1) of the Criminal Procedure Act Cap 200 R.E 2019, as it was irrelevant.

Upon hearing the submission from both parties, since the applicants have undertaken to abide by bail conditions and there being no objection from the respondent, the Court will grant this bail application in accordance with mandatory provisions of Section 36(5) and (6) of Cap. 200.

Accordingly, the 1st, 2nd and 3rd applicants are admitted to bail pending trial subject to the following conditions: -

1. The applicants to deposit in court, cash amounting to half of Tanzanian Shillings Seventy-Six Million Eight Hundred Ninety Eight Thousand Five hundred Fifty Five (**Tshs. 76,898,585**) or property/properties equivalent to half value of the said amount and the rest of the amount to be secured by execution of bond in writing. The principle of sharing to apply.
2. The applicants have to provide two (2) sureties each, who are to execute a bond of Tanzanian Shillings Six Million Five hundred Thousand (**Tshs. 6,500,000/=**) each, and to satisfy the Court that sureties are either employees of the Government or possesses a National Identity Card issued by NIDA with permanent residence within Mwanza Region.
3. The applicants should not leave jurisdiction of the Court without prior permission from the Resident Magistrates Court of Mwanza at Mwanza.
4. The applicants shall continue to attend their case on a date and time scheduled.

5. Verification of sureties and bond documents to be executed by the Deputy Registrar.
6. The applicants should surrender their passport and any other travelling documents (if any), to the Deputy Registrar.
7. The applicants will have to report to the Office of the Regional Crimes Officer (RCO) at Mwanza Regional Head Office of Police on each last working day of the month starting from February 2022.


In order to ensure compliance of these conditions, I further make the following orders: -

- (a) A typed copy of this order and proceedings be supplied to the trial court for record purposes.
- (b) Another typed copy of this ruling be supplied to the RCO for Monitoring reporting conditions.

It is so ordered.

DATED at Mwanza this 23rd day of February, 2022.




L. J. ITEMBA
JUDGE
23/2/2022