

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC.CRIMINAL APPLICATIO No. 99 OF 2021

*(C/F Economic Case No.15/2020 at the Corruption and Economic Crimes Division at
Arusha Registry.)*

KOROMO S/O NDALO LAIZA@BAHATI NDALO.....1st APPLICANT

ABRAHAM S/O HAIYO2ND APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

Date of last Order:8-4-2022

Date of Ruling: 10-5-2022

B.K.PHILLIP,J

The Applicants lodged this application under the provisions of section 148 of the Criminal Procedure Act, [Cap 20 R.E 2019] and section 36(1) of the Economic and Organised Crimes Control Act,(Cap 200 R.E 2019), [Hereinafter to be referred to as "the EOCCA"] praying for the following Orders;

- i. That, this honourable court be pleased to grant bail to the Applicants pending determination of Economic Case No.15/2020.*
- ii. Any other relief(s) this court may deem fit and just to grant.*

The application is supported by an affidavit sworn by the applicants. A brief back ground to this application is that, the Applicants, together with other six (6) accused persons stand charged with different offences under the EOCCA vide Economic Crime Case No.15/2020 which is pending for hearing at the Corruption and Economic Crime Division of the High at Arusha registry. The 1st and 2nd applicants are the 7th and 8th accused persons in the aforesaid Economic Crime Case No.15/2020.They are charged with the following offences;

- i) Unlawful hunting of scheduled animals without permit, in which it is alleged that 1st,2nd ,3rd ,4th , 7th, and 8th accused persons on diverse dates between 1st April, 2017 and 31st May 2018, at Olorien forests in Ngorongoro Conservation Area Authority within Ngorongoro Distirct and Arusha Region, jointly and together , did unlawfully hunt and killed one Black Rhinoceros valued at USD 38,000 which is equivalent to Tshs 86,521,060/=, the property of the Government of the United Republic of Tanzania.
- ii) Unlawful possession of firearms, in which it is alleged that the 1st, 2nd,3rd,4th,7th,and 8th accused persons on or about 21st July 2018 at Lobosilet Village within Simanjiro District in Manyara Region and in various places within Arusha Region , jointly and together , were found in unlawful possession of one firearm make Rifle 375 mm with serial No. 58771 TZ CAR 81069, without authorization from an authorized Authority.

- iii) Unlawful possession of ammunition, in which it is alleged that the 7th Accused person on or about 21st day of July, 2018 at Lobosilet Village within Simanjiro District in Manyara Region, was found in possession of nine (9) Rifle 375 mm round of ammunition , without authorization from an authorized Authority.

The learned Advocate Fridoline Bwemelo and the learned State Attorney, Lilian Kowero appeared for the applicants and the respondent respectively. I ordered the application to be disposed of by way of written submissions. Both sides filed the submissions as ordered by the Court.

The Counsel for the applicants started his submission by adopting the contents of the affidavit in support of this application. He went on submitting as follows; That the Applicants are innocent. They did not commit the offences they are charged with. The offences charged against the applicants are bailable and granting bail to the applicants will not prejudice the safety, and interest of Republic. In event this application is granted the Applicants are willing to execute bond and sureties as shall be ordered by this Court.

In rebuttal the learned State Attorney submitted that this Court has no jurisdiction to entertain this Application. She contended that according to the provisions of section 29(4),(c) of the EOCCA, it is the Corruption and Economic Division of the High Court which has jurisdiction to determine bail applications over matters before it.

The advocate for the applicants did not make any rejoinder to his submission in chief.

From the foregoing, this Court has to determine the following issues; *first whether this Court has jurisdiction to entertain this application* and secondly, if the 1st issue is answered in the affirmative, *whether this application has merit.*

Starting with the 1st issue, the provisions of section 29(4) (c) of the EOCCA provides clearly that when hearing has commenced the power to grant bail is vested in the Court. The EOCCA defines "the Court" as "The Corruption and Economic Crimes Division of the High Court" [See section 2 of the EOCCA].For clarity let me reproduce the provisions of section 29 (4) (C) of EOCCA hereunder;

Section 29 (4) (c)

"After the accused person has been addressed as required by subsection (3) the Magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes , to petition for bail and for the purpose of this section the power to hear bail applications and grant bail-

(a) N/A

(b) N/A

(c) *After the trial has commenced before the Court, is hereby vested in the Court."*

In the Counter Affidavit filed in Court by the learned State Attorney, it is stated that Economic Crime Case No.15/2020 is pending for hearing

before Hon. Luvanda ,J in the Corruption and Economic Crime Division, Arusha Registry. The trial of the case has already commenced. That assertion has not been disputed by the applicants. Under the Circumstances, I am inclined to agree with the learned State Attorney that this Court has no jurisdiction to entertain this application and the same is hereby dismissed.

Dated this 10th day of May 2022




B.K.PHILLIP

JUDGE