

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF MUSOMA)**

AT MUSOMA

Misc. CRIMINAL ECONOMIC APPLICATION No. 14 of 2022

*(Arising from the Resident Magistrates' Court of Musoma at Musoma in
Economic Crime Case No. 1 of 2022)*

- 1. FRANCIS DAVIS MCHACKY**
- 2. LEONARD REVOCATUS MITTI**
- 3. MGUDE CHOCHA BACHUNA**
- 4. MYRIAM ANGELINA FUNGAMEZA**
- 5. JESCA RAPHAEL MATABA**
- 6. DEUSEDEDIT GERALD RUTAZAA**
- 7. GRACE ANTHONY GODI**
- 8. GOODLUCK JOHN KIRABE**
- 9. ANNE WEREMA MANENO**
- 10. JULIUS HOSIANA MANENO MZIRAY &**
- 11. ZAKAYO JULIUS MWAMPAGWA**

APPLICANTS

Versus

THE REPUBLIC

RESPONDENT

RULING

03.03.2022 & 04.03.2022

Mtulya, F.H., J.:

Mr. Francis Davis Mchacky and ten (10) other persons (the applicants) are jointly and together accused and charged with economic offences of occasioning loss to specified authority, contrary to sections 57 (1) & 60 (2) and paragraphs 10 (1) of the First Schedule to the **Economic and Organised Crimes Control Act**

[Cap. 200 R.E. 2019] (the Act) and other four (4) economic related offences prosecuted in eight hundred and eleven (811) counts.

The applicants are alleged to have committed the offences in different locations of Mara Region on diverse dates between May 2013 and March 2016. Following the allegation, the applicants were arrested and arraigned before the **Resident Magistrates' Court of Musoma at Musoma** (the Resident Magistrates' Court) in **Economic Crimes Case No. 1 of 2022** (the Case) complained of intentionally occasioning loss of public money in the course of discharging their duties in the offices of National Health Insurance Fund (NHIF) located at Mara Region. The total value of money involved in the offences as displayed in the charge sheet against the applicants shows that the loss amounts to **Tanzanian Shilling Three Billion Three Million Eight Hundred Seventy Nine Thousand Six Hundred Eight Six Only (3,003,879,686/=)**.

The applicants being aware bail is a constitutional right and may be applied and granted under the Act, they asked Mr. Angelo J. Nyaoro, learned counsel to draft and prefer the present application in this court on 24th February 2022 attached with a certificate of urgency contending that: *the matter is utmost urgent as the applicants are in remand custody since 14th February 2022 allegedly to have committed the offence of occasioning loss to a specified*

authority, and the accusations have not been proved, and that [the applicants may be granted bail to avoid irreparable sufferings].

However, Mr. Nyaoro remained silent in the certificate on which irreparable sufferings that the applicants have faced, are facing or about to face.

This court is a court of justice. Despite the silence on part of the learned counsel Mr. Nyaoro, the application was scheduled by this court as it was practicable for hearing on 28th February 2022, but it was declined by the Republic enjoying the legal services of Mr. Nimrod Byamungu and Mr. Marshal Mseja, learned State Attorneys. The dual had registered three (3) reasons for the decline, viz: first, the republic was served on Friday, 25th February 2025 during closing hours of government offices hence it was unbearable to prepare a counter affidavit; second, the republic wished to consult appropriate prosecuting machinery in National Prosecution Services (NPS) and Prevention and Combating of Corruption Bureau (PCCB) to see whether they can file a certificate under section 36 (2) of the Act; and finally, the republic prayed to cherish the right to be heard in reasonable time.

The reasons and materials registered by the republic persuaded this court to grant two days' leave for the republic to prepare a counter affidavit and appear for the hearing. Yesterday afternoon,

3rd March 2022, the parties were summoned again to appear for the application hearing. Mr. Yesse Temba, learned Senior State Attorney, appeared for the Republic and when was invited to take the floor of this court for opening statement, he briefly stated that the Republic did not file the counter affidavit as it does not intend to protest the application. According to Mr. Temba as the Republic is well aware of the law in the Constitution and in the Act and in any case there is no any safety or interest of the Republic that will be prejudiced in granting bail to the applicants.

Following the opening statement of Mr. Temba, the applicants' team of learned counsels, marshalled by Mr. Ostack Mligo, Mr. Angelo J. Nyaoro, Mr. Thomas Matatizo and Ms. Mahura Tweve, relaxed and had a very brief submission with regard to relaxation of bail conditions as they are enacted in section 36 (5) (a) and (d) of the Act. According to Mr. Nyaoro, the practice of this court shows that applicants are ordered to deposit landed properties in tittle deed and limit applicants to enjoy freedom of movement within the geographical limit of the jurisdiction of the court in which the applicants were charged. In his opinion, the conditions are tough for the applicants who live in different locations like the present applicants who live in Mara and Dar Es Salaam regions.

Mr. Nyaoro opined further that this court may adjust and stretch the conditions to consider approved properties to be part in fulfilling bail conditions and freedom of movement to cover the territorial limit of the state of Tanzania instead of the Region of Mara as the applicants live at different parts of Tanzania. In order to bolster his argument, Mr. Nyaoro cited the decision of this court in **Leonard Revocatus Mitti & Another v. Republic**, Misc. Criminal Application No. 52 of 2021.

The thinking and prayer of Mr. Nyahoro were supported by Mr. Mligo for the applicants and Mr. Temba for the respondent. Mr. Mligo on his part invited this court to read the decision in **Abadi Seif Said & Seven Others**, Misc. Criminal Application No. 7 of 2020 on lenient bail conditions whereas Mr. Temba cited the precedent of **Adam Genes @ Mkini v. Republic**, Misc. Criminal Application No. 64 of 2021 on consideration of other properties than landed properties in title deed when considering bail conditions.

I have perused and scanned the provisions in section 36 (5) (a)–(d) & (6) (a)–(c) of the Act and practice of this court and Court of Appeal. The proviso in section 36 (5) (a) of the Act provides that: *if the title deed is not available such other evidence as is satisfactory to the court in proof of existence of the property.* I am also aware article 13 (6) (b) enshrined in the **Constitution of the United**

Republic of Tanzania [Cap. 2 R.E. 2002] (the Constitution) on presumption of innocence and precedent in **Freeman Aikael Mbowe & Another v. Republic**, Criminal Appeal, No. 344 of 2018 on soft bail conditions to avoid denial of freedom of movements of accused persons in criminal cases. Since the enactment of the article in the Constitution in 1984 and amendment in section 148 (5) of the **Criminal Procedure Act** [Cap. 20 R.E. 2019] & section 36 (5) of the Act, this court has been adjusting itself in favour of human freedom of movement.

The adjustment is well enumerated by this court in the precedent of **Freeman Aikael Mbowe & Another v. Republic** (supra), which was supported by other several decisions of this court, including the cited precedents in **Leonard Revocatus Mitti & Another v. Mgude Chocha Bachunya v. Republic** (supra) and **Adam Genes @ Mkini v. Republic** (supra). I perused the decision of **Leonard Revocatus Mitti & Another v. Mgude Chocha Bachunya v. Republic** (supra), and found bail condition number 4 printed at page 3 of the decision expanding the territorial border from Mara Region to the whole state of Tanzania. Similarly, the precedent of **Adam Genes @ Mkini v. Republic** (supra) stretched the requirements from registration of title deed to approved property, as is depicted at page 5 of bail condition number 1.

I understand section 36 (1) of the Act was enacted by use of the word *may* for the applicant in initiating an application whereas section 36 (5) (a) of the Act inserted the word *shall* to imply mandatory nature of the provision as per law in section 53 (2) of the **Interpretation of Laws Act** [Cap. 1 R.E. 2019) (the Interpretation Act) and precedent of the Court of Appeal in **Ashura Abdulkadri v. The Director Tilapia Hotel**, Civil Application No. 2 of-2005. However, the case **Director of Public Prosecutions v. Freeman Aikael Mbowe & Another v. Republic** (supra) stated that the word *shall* in some occasion may invite permissive and flexible approach of issues (see also: **Bahati Makeja v. Republic**, Criminal Appeal No. 118 of 2006, **Zahara Kitindi & Another v. Juma Swalehe & Nine (9) Other**, Civil Application No. 4/05/ 2017, and **Patrick Sahani Ojwang' v. North Mara Gold Mine**, Labour Revision No. 23 of 2021).

It is unfortunate in the present application learned minds of both parties have assisted this court in citing precedents in favour of granting bail without due delay and grant of reasonable conditions which applicants can afford to comply (see: **Leonard Revocatus Mitti & Another v. Republic** (supra) and **Adam Genes @ Mkini v. Republic** (supra) and **Abadi Seif Said & Seven Others** (supra). In fact, they acted as officers of this court per law in section 66 of the **Advocates Act** [Cap. 341 R.E. 2022] (the Advocates Act).

I am aware that this court may order bail conditions as it may wish, especially when there is mischief in management of public properties, public interests, national economy and high rate of economic offences. In the precedent of **Director of Public Prosecutions v. Dennis & Eleven Others**, Criminal Appeal Case No. 87 of 2019, it was stated at page 24 of the decision that:

*...the interpretation employed in miscellaneous criminal economic applications for bail with regard to deposition of title deed supported by valuation report from the Government Valuer may not be invited and applied in the present appeal. In economic cases, the remedies are obvious, viz: to protect natural resources, public interests, public properties and national economy. This is vivid from the precedent of **Prof. Dr. Costa Ricky Mahalu & Another v. The Hon. Attorney General** (supra) when stating on strictness of bail conditions.*

I have also navigated and scanned the decision in **Prof. Dr. Costa Ricky Mahalu & Another v. The Hon. Attorney General**, Miscellaneous Civil Cause No. 35 of 2007 and found at page 30 of the decision that:

It is generally accepted that once an offence is bailable, the applicable principle requires that the conditions must

be reasonable...However, when it comes to the application of the Act [the Economic Crimes Act] ...

Once charged, a person who does not have the requisite amount will have no option but to be deprived of his liberty not because the offence is not bailable but because he cannot meet the condition of depositing the requisite amount of money...

(Emphasis supplied).

The reasoning of this court is found at page 33 of the Ruling in the following words:

*It is indisputable fact that the Act [the Economic Crimes Act] was enacted **for purpose of control and eradication of economic crimes with a view of protecting public property and national economy as a whole.** It is important legislation in view of challenges facing our growing economy...*

(Emphasis supplied).

This reasoning of the court is within the purpose behind enactment of the provisions in section 36 (5) & (6) of the Act and has been followed by several other precedents of this court (see: **Salum Abeid Mbaya & Ten Others v. Republic**, Consolidate Misc. Economic

Applications Nos. 68 & 69 of 2019; **Said Bakari & Another v. Republic**, Misc. Criminal Economic Application No. 79 of 2020; **Juma Kambi Kong'wa & Another v. Republic**, Misc. Economic Cause No. 16 of 2017; and **Fausta Gaitan Lumoso & Three Others v. Republic**, Misc. Economic Cause No. 40 of 2017. It has been the practice of this court that once precedents are registered, no any other interpolations may be invited, unless there are good reasons to do so.

Yesterday in this court, the learned minds in both parties registered good reasons in favour of new thinking and developments currently occurring in applications like the present one, and I may join them hands in the course. I remember the question asked in the decision of **Salum Abeid Mbaya & Ten Others v. Republic** (supra), in the following text displayed at page 14 of the Ruling:

*...which other property than title of a registered land
can secure availability of an accused person in court?*

*To my opinion, I am of the considered view that the
deposition of tittle deed, in one of the requirements of
bail conditions in economic cases, is more reliable than
any other property.*

I am equally aware that the amount of Tanzanian Shillings Three Billion plus is huge amount of money as drafted in the charge sheet.

However, Mr. Temba stated in this court yesterday that the Republic does not have any interest to issue a certificate enacted in section 36 (2) of the Act to restrict bail to the applicants. This statement is very important as it distinguishes the present application with other criminal applications in economic related cases. In law, each case must be decided in its own peculiar facts and evidences (see: **Alliance Insurance Corporation v. Arusha Art Limited**, Civil Application No. 512/2 of 2016, **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2019, and **Florentina Philbert v. Verdiana Protace Mujwahuzi**, Misc. Land Application No. 75 of 2020).

In brief, the precedent in **Freeman Aikael Mbowe & Another v. Republic** (supra) has already laid down a very important text in bail application matters which shows that:

...if the offence is bailable, consideration of presumption of innocence, cancellation of bail with reasons, consideration of gravity of offence, conditions to avoid implied denial of bail, conditions to avoid double jeopardy, reasons for denial must be reasonable, consideration of congestion in remand or prison and consideration of freedom and liberty of individuals.

I think, I will be guided by the text in determining the present bail conditions, but bound by the enactment of section 36 (5) (a)-(d) & 36 (6) (a) – (c) of the Act. I am also aware when applicants are so many in the same application, the principle of *sharing the amount of value of money involved in an offence when determining bail conditions where there is more than one accused person facing the same charges* as it was introduced in the precedent of the Court of Appeal in **Silvester Hillu Dawi and Others v. Director of Public Prosecutions**, Criminal Appeal No. 250 of 2006. The principles is now certain and settled (see: **Abeid Mussa & Another v. Republic**, Misc. Criminal Application No. 9 of 2017; **Salum Abeid Mbaya & Ten Others v. Republic**, Consolidate Misc. Economic Applications Nos. 68 & 69 of 2019; and **Said Bakari & Another v. Republic**, Misc. Criminal Economic Application No. 79 of 2020).

However, as I stated earlier in this Ruling, this court is empowered to impose any conditions which may deem fit in the interest of justice for the applicants to appear in the case. Having said so, and considering the conditions under the provisions of section 36 (5) (a)-(d) & (6) (a)-(c) of the Act, and regarding the cited precedents in **Leonard Revocatus Mitti & Another v. Republic** (supra), **Adam Genes @ Mkini v. Republic** (supra) and **Abadi Seif Said & Seven Others** (supra), I have formed an opinion to grant the

applicants bail pending hearing and final determination of the case in the Resident Magistrates' Court. However, the applicants shall be released upon fulfilling the following listed conditions:

1. Each Applicant shall surrender his passport or any other travelling documents, if any, to the Registrar of this court;
2. Each applicant shall report to the Registrar of this court once in every last Monday of a month and sign a specific register, if need be;
3. Each applicant shall not travel out of the state of Tanzania without prior written leave of the Registrar of this court;
4. Each applicant should have two sureties, and one must be employee of the government, local government, government agency, or any other organization recognized under the law and must be resident within the state 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/her applicant is available and enter attendance in court whenever required;

9. Each applicant shall deposit cash in sum Tanzanian Shillings One Hundred Thirty Seven Million Only (137,000,000/=), or in case the applicant decides to deposit immovable or approved property, he/she shall deposit either title deed supported by Valuation Report from the Government Valuer or documents justifying the approved property from the appropriate authority displaying equivalent or more amount of money cited above; and

10. Each of the applicant's sureties shall sign a bond of sum of Tanzanian Shillings Seventy Million Only (70,000,000/=) as a security for appearance of the respective applicant in court.

The above ordered bail conditions shall be supervised and sureties certified by the Registrar of this court or Deputy Registrar of this court, Musoma District Registry. This application is granted

without any order as to the costs. Each party shall bear its own costs.

Ordered accordingly.

Right of appeal explained.



F. H. Mtulya

Judge

04.03.2022

This Ruling was delivered in Chambers under the seal of this court in the presence of the learned Senior State Attorney, Mr. Yesse Temba, through teleconference and in the presence of the applicants' learned counsels, Mr. Ostack Mligo, Mr. Angelo J. Nyaoro, Mr. Thomas Matatizo and Ms. Mahura Tweve.



F. H. Mtulya

Judge

04.03.2022