

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CRIMINAL APPLICATION NO. 113 OF 2021

(C/F Karatu District Court, Economic Case No. 3 Of 2021)

FLORIAN SEBATIAN.....APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

17.03.2022 & 18.03.2022

N.R. MWASEBA, J.

This application for bail pending trial has been filed by the applicant namely, Florian S/O Sebastian. The applicant together with six others are the accused persons in Economic Case No. 3 of 2021 pending in the District Court of Karatu at Karatu. The pending case involves three counts. However, the applicant herein stands charged with the second count only.

The second count is Unlawful Hunting of Scheduled Animals without permit; contrary to Section 47 (a) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the First Scheduled to, and

Sections 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, Cap 200 R.E 2019.

The count involves hunting and killing of two elephants valued at Tanzania shillings Sixty-nine million four hundred thirty-five thousand (Tshs. 69,435,000) the property of the Government of Tanzania. Since the value of money involved exceeds ten million shillings, the applicant has applied for this Court to grant him bail pending trial.

The application is made under section 148 (4) and (5) of the Criminal Procedure Act, Cap 20 of R.E 2019 and sections 29(4) (d) and 36(1), (5), and (7) of the Economic and Organised Crimes Control Act, [Cap. 200 R.E.2019]. It is supported by affidavit of his counsel one Joseph Hillary, learned advocate.

The hearing was conducted by way of oral submission whereby, the applicant was represented by **Mr. Joseph Hillary**, learned advocate. On the other side, **Ms Eunice Makala**, learned State Attorney appeared for the Republic.

Supporting the application, Mr. Hillary first adopted their affidavit to be part of their submission in chief. He added that, the applicant was charged with the offence of Unlawful Hunting of scheduled animals without permit under the provision as provided herein. Currently the

applicant is at Kisongo Prison and the investigation of their case is still incomplete. Since the offence is a bailable one they prayed for the applicant to be released on bail (**See Article 13 (6) (b) of the Constitution of the United Republic of Tanzania, 1977** (as amended from time to time)).

Further to that, he told the court that the applicant was sick before he was charged, and he is still suffering from Ulcers. He prayed to tender a doctor's report to prove his sickness. More so, as the applicant is ready to meet all the bail condition which will be given by the court, they prayed for the bail to be granted.

On their side, the respondent did not object the bail since the offence is a bailable one, they only prayed for the court to consider **Section 36 (5) of Cap 200** which sets out bail conditions for this kind of offences. Further to that, they object for the letter of the doctor describing the disease of the applicant to be admitted as evidence since it is a copy and not original one and it was not signed.

In brief rejoinder, the applicant's counsel admitted that the letter they submitted is a copy one since its original one is on the court file and prayed for the applicant to be released on bail.

I am aware that a court with competent jurisdiction has discretion of granting bail depending on the nature of each case, nature of offence and amount of money involved. The primary consideration in granting bail is the interest of justice to the accused and the complainant.

In the present application, the applicant is charged with bailable offence, and the respondent did not object to the prayer made. She only objected to the doctor's letter to be admitted as exhibit as it was a copy, and it was not certified. However, the said letter does not add value to this application.

The applicant being charged with an economic offence, bail conditions are prescribed under **Section 36 (5) of the Economic and Organized Crime Control Act** [Cap 200 R.E 2019]. This provision, among other things, requires the applicant to pay cash bond or submit to court the security whose value is at least half of the value of the property or money involved. The rest value is required to be executed by bond.

In the circumstance, the application for bail pending trial is hereby granted. I accordingly admit the applicant to bail upon complying with the following conditions:

- 2. The Applicant should not travel outside Arusha Region without prior approval of the District Court of Karatu at Karatu.*
- 3. The applicant to deposit cash or Title deed of a property or property approved to have the value equivalent to half the amount or value of the money or property for which the applicant is charged, that is 69,435,000/= divided equally between the four (4) accused persons including the applicant. Therefore, the applicant will deposit cash or title deed, or property approved to have the value equivalent to TZS 8,679,375/=.*
- 4. The Applicant should have two reliable sureties and with fixed abode within the jurisdiction of the trial Court;*
- 5. Each surety should produce an introductory letter from his or her employer or local authorities and a copy of recognized identity card.*
- 6. Each surety shall execute a bail bond in the sum of Tshs. 5,000,000/=*
- 7. The applicant shall appear in court on all dates the case is pending before Karatu District Court; and*

8. The Deputy Registrar of the High Court of Arusha shall insure that all the conditions are fulfilled before, the applicant is released on bail.

It is so ordered.

DATED at ARUSHA this 18th day of March, 2022.



N.R. Mwaseba

N.R. MWASEBA

JUDGE

18.03.2022