

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISCELLANEOUS CRIMINAL APPLICATION NO. 9 OF 2022

*(Arising from Economic Crimes No. 01/2022 of the Resident Magistrate's
Court of Songwe at Vwawa)*

ADIDAS KAUZEN PASUA 1ST APPLICANT

EDGA ADIDAS KAUZEN 2ND APPLICANT

AYUB MICHAEL MGANDILWA 3RD APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

NGUNYALE, J.

The applicants namely ADIDAS KAUZEN PASUA, EDGA ADIDAS KAUZEN and AYUB MICHAEL MGANDILWA stands charged before the Resident Magistrate Court of Songwe at Vwawa with the offence of Unlawful Possession of Government Trophy contrary to section 86 (1) (c) (iii) of the Wildlife Conservation Act No. 05 of 2009 as amended, read together with paragraph 14 of the First Schedule to and section 57 (1) and 60 (2) both of the Economic and Organized Crimes Control Act Cap 200 R. E 2019. The said case is pending before the said Court waiting trial. Today, the applicants are before this Court under section 29 (4) (d) and 36 (1) of the Economic and Organized Crimes Control Act, Cap 200 R. E 2019 praying

for bail pending trial of the said Economic Case No. 01 of 2022 which is pending before the said Resident Magistrate Court.

The application has been supported by the affidavit sworn jointly by the applicants. In their joint affidavit they stated that the said charge was read against them on the 25th January, 2022 and they were informed by the presiding Magistrate that they were not supposed to plead as the Court had no jurisdiction hence, they preferred this application for bail. The government trophy they are suspected to destroy amounts to 34,575,000/= Tshs the amount that is out of the jurisdiction of subordinate courts to grant bail in such an economic offence. They averred further that they have reliable persons who can stand bail for them as sureties. The intended sureties are reliable having fixed place of residence owning valuable movable and immovable properties within the country.

During hearing the applicants were represented, they enjoyed the legal service of Ms. Nyasige Kajanja learned Advocate whereas the respondent was ably represented by Mr. Mwashubira Senior State Attorney.

During hearing of the application Ms. Kajanja for the applicants was fairly brief that the offence against the applicants is bailable but the High Court is the only Court with jurisdiction to grant bail pending trial. She prayed the Court to grant bail pending hearing and determination of the economic case which the applicants are facing, they will meet bail conditions as will be set by the Court.

Likewise, Mr. Mwashubira for the respondent was fairly brief that they support the application because the affidavit bears genuine reason for granting bail pending trial.

This Court upon consideration of the submissions of both parties and having considered the provision of Section 29(4)(d) of the Economic and Organized Control Act, Cap 200 RE 2002, finds no reason to differ with the stance of both counsels on the fact that this Court has jurisdiction to determine the application. The said section 29(4)(d) reads: -

"After the accused 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 purposes of this section the power to hear bail applications and grant bail-

(a)...

(b)...

(c) ...

(d) in all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court."

The above provision gives jurisdiction this Court to grant bail in cases of this nature as rightly submitted by Ms Nyasige for the applicants and supported by the respondents' attorney. Having held that this Court has jurisdiction to determine the application I wish to move further to determine the merits of the application. Ms. Nyasige submitted that the applicants are Tanzanians having reliable sureties who can stand bail for them, the same has also been stated in the affidavit. The respondents waived their right to file counter affidavit but in oral submission they avowed that they support the application. Since the parties concede to the application, I find no reason to deny the application taking into account that bail is a right and not a privilege.

The Court is bound to consider the Condition and terms of bail, in considering the same the Court is guided by section 36 (5) of the Economic and Organized Crimes Control Act Cap 200 R. E 2019. The said provision of the law provides for mandatory bail conditions and terms such as, for an application to deposit cash half the amount of the actual money or property equivalent in value to half the amount of the amounts stated in the charge.

In the present case the amount in the charge in Economic Case No. 01 of 2022 before Resident Magistrate Court of Songwe is 34,575,000/= and half the amount is 17,287,500. As so far, the half amount is 17,287,500/= under the principle of sharing each applicant is responsible 1/3 of 17,287,500/=.

The applicant may be released on bail provided they meet conditions as provided under section 36 (5) (a) (b), (c) and (6) of the Economic and Organized Crimes Control Act Cap 200 R. E 2019 that;

- (i) Each applicant shall execute a bond of TZS 5,762,500 and shall have two reliable sureties and each surety shall execute a bond at like sum.
- (ii) The surety shall deposit either cash money 5,762,500/= or immovable property which has been subjected to valuation or evidence that its value is equivalent to such amount.
- (iii) Sureties shall be residents of Mbeya/Songwe Region which is the geographical jurisdiction of the Resident Magistrate Court of Songwe or nearby.
- (iv) The applicant must surrender to the Regional Crimes Officer, Songwe region their passport or any travel documents (if any).

- (v) The applicant shall appear before the Court where his trial is pending on specified dates and time.
- (vi) The applicant shall not travel outside Songwe region without leave of the Songwe Resident Magistrate Court.

The credentials of the sureties shall be approved by the Deputy Registrar of this Court.

It is so ordered.




D. P. Ngunyale
Judge
02/03/2021

Delivered this 2nd day of March 2021 in presence of the applicants represented by Ms. Nyasige Kajanja learned Advocate and Mr. Mwashubira learned State Attorney for the respondent.


D. P. Ngunyale
Judge
02/03/2021