

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(DISTRICT REGISTRY OF MOROGORO)**  
**AT MOROGORO**

**MISC. CRIMINAL APPLICATION NO. 01 OF 2022**

*(Arising from Economic Case No. 47 of 2021 pending in the Resident Magistrate Court of Morogoro)*

**FRANK ANDREA MWAIPUNGU..... 1<sup>ST</sup> APPLICANT**  
**ALLY OMARY LIKUMBAGE .....2<sup>ND</sup> APPLICANT**  
**EMMANUEL LAMECK MWAKANOSYA .....3<sup>RD</sup> APPLICANT**  
**JAMAL SAID MAPALANGA .....4<sup>TH</sup> APPLICANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

*Hearing date on: 31/1/2022*

*Ruling date on: 01/2/2022*

**NGWEMBE, J:**

The applicants were arraigned in court charged for unlawful possession of Government Trophies contrary to section 86 (1) (2)(b) & (3) of the Wildlife Conservation Act No. 5 of 2009 as amended read together with paragraph 14 of the First Schedule to and section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap 200 R.E. 2019.

They are jointly alleged to have been found with three elephant tusks valued at USD 30,000.00 equal to TZS. 69,510,000/=. While their case is yet to be heard, they jointly filed this application for bail pending hearing and final determination of their case. The application was attached with certificate of urgency and affidavits of applicants.

The application is not opposed by the Republic and on the hearing date the learned State Attorney Tumain Mafuru did not oppose the application. The applicants were not represented by an advocate, hence had very limited contributions to their application. All alleged that they have reliable sureties and promised to attend their trial to the end.

I fully subscribe to the learned State Attorney, that bail on a bailable offence may not be resisted so long the accused/applicant assures to attend his trial to the end. Assurance of bail to bailable offences is provided for in the constitution and same position was rightly pronounced in **Misc. Economic Crimes Application No. 37 of 2019 between Haji Likambako Vs. R.** Above all, this court has pecuniary jurisdiction to determine any application for bail involving an amount above ten million shillings. In this application the main case involves TZS. 69,510,000/=:, thus above the minimum requirements of TZS. 10 million, hence this court has jurisdiction

Reading sections 36 (5) of the Economic and Organized Crime Control Act (EOCCA,) obvious bail conditions are codified. Therefore, the court has no discretion to determine bail conditions based on the prevailing circumstances of the case, rather should comply with what is provided for by the law.

As such, charges on Economic Cases, are baillable subject to fulfilment of those conditions provided for in section 36 (5) of the Act. The section is quoted hereunder:-

Section 36 (5): *"Where the court decides to admit an accused person to bail, it shall impose the following conditions on the bail, namely:-*

- (a) Where the offence with which the person is charged involves actual money or property whose value exceeds ten million shillings unless that person deposits cash or other property equivalent to half the amount or value of actual money or property involved and the rest is secured by execution of a bond; provided that where the property to be deposited is immovable, it shall be sufficient to deposit the title deed, or if the title deed is not available such other evidence as is satisfactory to the court in proof of existence of the property; save that this provision shall not apply in the case of police bail;*
- (b) Appearance by the accused before the court on a specified date at a specified time and place;*
- (c) Surrender by the accused to the police of his pass port or any other traveling documents; and*
- (d) Restriction of the movement of the accused to the area of the time, village or other area of his residence".*

Moreover, the applicants' affidavits in paragraphs 6, 7 & 8 of their affidavits have affirmed that they have permanent and fixed abode with reliable sureties who can execute bonds to secure and ensure them to attend their trial whenever required. With that assurance, I have no doubt, the accused persons, while on bail will not fail to enter appearance at the trial court. Further, when they are on bail, will not attempt to interfere with investigation process or influence witnesses. Also, they will not commit other similar offences.

In the premise, I proceed to grant bail to **Frank Andrea Mwaipungu, Ally Omary Likumbage, Emmanuel Lameck Mwakanosya, and Jamal Said Mapalanga** as prayed in the Chamber Summons. Being guided by section 36 (5) of Economic and Organized Crimes Control Act, the grant of bail to the applicants are subject to fulfilment of the following conditions:-

1. Every applicant shall deposit in a court account **TZS. 8,000,000/=** or deposit **Title Deed** of immovable properties having similar value or more value located in any cities in Tanzania or in Morogoro region or in Kilosa District;
2. Every applicant must provide one reliable surety; who should execute a bond valued **ten million shillings only**;
3. Every applicant should not leave the jurisdiction of the Resident Magistrate Court of Morogoro without permission from the Resident Magistrate of Morogoro;

4. Every applicant shall surrender his passport, if he has, and any other travelling documents to the Resident Magistrate of Morogoro Resident Magistrate Court;
5. Every applicant is mandatorily compelled to appear in court at any time when he is required to do so up to the final determination of their criminal case; and
6. Verification of sureties and bond documents shall be executed by the Resident Magistrate of Morogoro Resident Magistrate Court.

**It is so ordered.**



**P.J. NGWEMBE**

**JUDGE**

**01/02/2022**

**Court:** Ruling delivered at Morogoro in Chambers on this 1<sup>st</sup> day of February, 2022 in the presence of all applicants and Mr. Tumain Mafuru learned State Attorney for the Republic/Respondent.

**Right to appeal to the Court of Appeal explained.**



**P.J. NGWEMBE**

**JUDGE**

**01/02/2022**