

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY OF ARUSHA]

AT ARUSHA

CRIMINAL REVISION NO. 01 OF 2020

(C/F Economic Case No. 30/2021 Arusha Resident Magistrate's Court)

REPUBLIC.....APPLICANT

VERSUS

PAUL JOHN URIO.....1ST RESPONDENT

UPENDO ESTOMIH MAFIE.....2ND RESPONDENT

RULING

09th May 2022

TIGANGA, J

This matter was referred to this Court by the Resident Magistrate In charge of the Court of Resident Magistrate of Arusha, after the same matter had been placed before him by the trial Magistrate on the ground that her predecessor Magistrate had granted bail to the accused persons who stood and still accused with the Economic offence involving the government trophies valued Tshs. 207,956,700/=.

From her order dated on 27th January 2022 when the trial Magistrate took over the proceedings, she realized that her predecessor had already set bail conditions and approved bail to the 1st accused. In her view it was

not proper for the predecessor Magistrate to grant bail while the value of the said trophies was more than ten million. It is on that base, she tabled the matter to the Resident Magistrate in charge for directives.

After such file had been taken to the Resident Magistrate in charge, he decided to forward the case file to the Hon. Judge in charge via his letter with Ref No. RM/MCS/VOL.4/76 dated 31/01/2022 for directives.

After receiving the letter, the Hon. Judge in charge called for the said case file for revision. It is pursuant to that order or directive of the Hon. Judge in charge, Criminal Revision No. 1 of 2022 was opened and placed before me for orders.

After the case was assigned to me, summons were issued to the parties, who upon appearance Ms. Akisa Mhando, learned Senior State Attorney who appeared for the Republic, submitted that in her view, section 36 (7) of the Economic and Organized Crimes Control Act [Cap 200 R.E. 2019] allows the subordinate court before which an Economic case is filed, to grant bail to the accused person before it if the Director of Public Prosecutions has filed the consent for the accused's prosecution and after he had filed the certificate/conferring the Jurisdiction to the Court. She said to the best of her knowledge, the consent and certificate by the Director of Public Prosecutions were issued and filed in Court on

04/11/2021 and it is on that very date the trial Magistrate granted bail to the accused by setting the bail conditions. For that matter, the trial Magistrate was correct because by then she had powers to do so.

Mr. Stephen Magambo, learned Advocate who appeared representing the accused persons, concurred with the learned Senior State Attorney that the trial Magistrate had powers to grant bail.

He asked the case file to be returned to the trial Court for the court to continue granting bail.

It should be noted that, the trial Magistrate based on the provision of Section 29 (4) (a) of the Economic and Organized Crimes Control Act [Cap 200 R.E. 2019] which provides that: -

"After the accused has been addressed as required by Section (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 powers to hear application and grant bail

(a) Between the arrest and the committal of the accused for trial by the Court is hereby vested in the District Court and the Court of Resident Magistrate if the value of any property involved in the offence charged is less than ten million shillings.

(b) N/A

(c) N/A

(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 of the trial before the court is hereby vested in the High Court."*

Section 36 (7) of the same law, which has been referred to by Ms. Akisa Mhando, SSA, provides that (7) for purposes of this section "the court" includes every court which has jurisdiction to hear and determine a petition for and grant bail to a person under charges triable or being tried under this Act.

In my view, once the subordinate court has been given consent and certificate by the Director of Public Prosecution that subordinate court becomes an Economic Court, and becomes capable of hearing the case which include powers of granting bail regardless the value involved.

It should also be noted that, as of now, the law that is section 29(4)(a) has been amended by section 35 of the Written Laws (Miscellaneous Amendment), Act, 2022 Act No. 01 of 2022. That amendment increased the value of the trophies or the subject matter involved in economic case for which the subordinate court has powers to grant bail from ten million to three hundred million. Which means as of

now, as the amount involved is not more than three hundred million, then the trial court has jurisdiction to grant bail.

It is also on record that, in this case, the Director of Public Prosecutions issued the certificate and consent on 04/01/2021 to the trial court, therefore, the trial court became capable not only of hearing the case but also of issuing other orders including the order for granting bail.

That being the position, I hereby find that, the trial Magistrate was justified to set bail conditions and approving the same as long as the bail conditions so set are reasonable and legal which compels the accused person to appear in Court.

By this order, the original case is hereby returned to the trial court for the court to grant bail to the 2nd accused being guided by the bail conditions set on 04th November 2021 by the predecessor Magistrate, as well as to commence trial.

It is so ordered.

DATED at ARUSHA, this 09th May, 2022.



A handwritten signature in blue ink, appearing to read "J.C. Tiganga".

J.C. TIGANGA

JUDGE