

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT ARUSHA

MISC. CRIM. APPLICATION No. 14 OF 2022

(Originating from Eco. No. 26 of 2021 of RMs Court of Arusha)

MAUNDA FADHIL MSHANA1ST APPLICANT

JOFREY JOSEPH @ NGIDO JOSEPH.....2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

31st March 2022.

TIGANGA, J;

Under certificate of Urgency, the two applicants namely Maunda Fadhili Mshana, and Jofrey Joseph @ Ngido Joseph, have applied before this Court for bail. The application has been preferred under section 29 (4) (d) and 36 (1) of the Economic and Organized Crimes Control Act [Cap 200 R.E. 2019]. The applicant also cited Article 13 (6) (b) and 15(2) (a) of the Constitution of the United Republic of Tanzania, 1977.

The application was made by chamber summons and supported by the affidavit sworn by Ms. Upendo J. Msuya, learned Counsel for the applicants who also appeared and argued the application for the applicants. The reasons for the application are reflected in the affidavit

filed in support of the chamber summons. The reasons given in the affidavit also formed part of the arguments of the counsel for the applicants which I will consider together in this Ruling. The reasons for the application as reflected in the affidavit and arguments show that, the applicant stands charged before the Court of Resident Magistrate of Arusha in Economic Case No. 26 of 2021, in which the applicant together with two others stand charged with among others, with an offence of unlawful possession of government trophies valued Tshs. 34,728,150/= . Since in terms of section 29 (4) (d) of [Cap 200 R.E. 2019] herein cited, the subject matter for which they are charged exceeds the value of Tshs 10,000,000/= it is the High Court which is vested with jurisdiction. It is further the contention by the counsel for the applicant both in the affidavit and arguments made in support of the application that, the applicants are committed to fulfill the bail conditions to be set by the Court and is ready to execute the set bond. She prayed in the end that the application be granted, the applicant be admitted to bail.

The respondent Republic objected the application by filing the counter affidavit sworn by Ms. Akisa Mhando, learned Senior State Attorney who also appeared for the respondent and argued the application. In both the counter affidavit and the arguments, the learned

counsel does not dispute the contention that, bail is a constitutional right of the accused person. However, she prayed this Court not grant bail in this case, instead it the matter be returned to the trial Court so that the prayers can be made and granted before it because the trial court is seized by jurisdiction. Her arguments to that effect is based on the reasons that, section 29 (4) (d) read together with section 36 (1) and 36 (7) both of the Economic and Organized Crimes Control Act, [Cap 200 R.E. 2019]. Starting with Section 29 (4) (d), she submitted that, it directs that, where a person is charged with economic offence before subordinate Court for which it has not been conferred with jurisdiction, that person may apply for bail to the High Court.

It is her further contention that, section 36 (1) of the same law, allows an accused person charged with any bailable offence to be granted bail by the Court, while section 36(7) of defines the Court to include the Court with jurisdiction to hear and determine the case. Applying the law to the case at hand, she submitted that, the Resident Magistrate's Court before which Economic Case No. 26/2021 is filed has already been conferred with jurisdiction, and as of now, the trial of the case has already been commenced. She contended that in the circumstances of the case at hand, the said subordinate Court is in terms of the provisions cited herein above vested with jurisdiction to

grant bail. For that reasons, he prayed for the Court to return the matter to the subordinate Court so that the said Court can hear and grant bail because it has jurisdiction to do so where the trial of the case has already been commenced.

In her rejoinder submission, Ms. Upendo J. Msuya submitted that she is aware of the provisions cited by the Senior State Attorney but in her quick perusal of the said provisions, there is nowhere the jurisdiction of the High Court has not been taken away by the provisions, she said since the High Court still has jurisdiction to entertain the application and grant bail, he asked the Court to be pleased to grant bail.

Considering all that has been said herein above, it is true that basically all Economic cases whose value of the subject matter involved in the offence charged is ten Million shillings or more at any stage **before commencement of the trial before the Court** is vested in the High Court. It is also true that under section 36 (1) the accused person in any Economic case may be granted bail and section 36 (7) of the same law, define the Court includes every Court which has jurisdiction to hear and petition to grant bail.

Generally, it has already been established in a number of cases, one of them being the case of **The Director of Public Prosecutions vs**

Daudi Pete, Criminal Appeal No. 28 of 1990, CAT – Dar es Salaam that in all bailable offences, bail is a constitutional right of the accused person. It is basically a principle that bail can be granted and should be granted by the Court before which the case has been filed and the accused person has been arraigned, as long as that Court is competent to hear the case.

It is in very exceptional circumstances where the High Court is empowered and required to grant bail to cases which have not been committed to it, and one of the said exceptions is where the subordinate Court is not yet vested with jurisdiction to entertain the case. The High Court under Section 29 (4) (d) may entertain the bail application and grant Bail. However, reading between lines the provision of the law cited hereinabove; one may find that the High exercises that exceptional power only when the **trial has not been commenced before subordinate Court**. This means therefore that, where the trial has already been commenced after the consent and certificate of the DPP conferring jurisdiction have already been filed, then it is the subordinate Court which is seized with jurisdiction to grant bail.

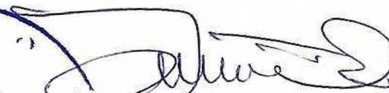
Now the issue is whether in the circumstances, the jurisdiction of the High Court is ceased by conferring jurisdiction to the subordinate

Court. As properly submitted by Ms. Msuya, Advocate that there is no express provision taking away the jurisdiction of the High Court, however, it should be noted that, the jurisdiction of the High Court is one of the exception of the principle that bail must be granted by the Court before which the accused is arraigned, it means therefore for good record, convenience and proper management of the record and attendance of the accused person, it is prudent that since as of now the trial court has jurisdiction, the applicants are directed to appear before the trial court and ask for bail so that their application can be dealt with in accordance with the law.

That said, the application at hand is struck out, the parties are advised to appear before subordinate Court in Economic No. 26 of 2021 so that they can ask for bail.

It is accordingly ordered.

DATED at ARUSHA this 31st day of March, 2022.



J.C. TIGANGA
JUDGE

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