

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT ARUSHA

MISC CRIMINAL APPLICATION NO. 15 OF 2022

(Originating from Economic Case No. 12/2021 Monduli District Court)

JOHNSON NAFTAL @ SIMON @ KITUNGUU.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

15/03/2022 & 15/03/2022

MZUNA, J

Johnson Naftal @ Simon @ Kitunguu @ John, Abdi Juma and Abasi Yusuph Isengwa @ Kobe the 1st, 2nd and 3rd Applicants respectively, have filed the application for bail in this Court against the Republic. The joint affidavit shows that they are currently facing 4 (four) counts. The first Count is for Leading Organized Crimes contrary to paragraph 4(a) of the 1st schedule to and Section 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, Cap. 200 R.E. 2019. THE Offences are alleged to have been committed at Monduli.

The value of the Government trophy stated in the 2nd and 3rd count is Tshs. 69,300,000/=.

The applicants preferred bail in this Court but Ms. Akisa Mhando, the learned Senior State Attorney notified Court that the Court (i.e. Monduli DC) is currently conferred with jurisdiction as the certificate to that effect had already been filed. She saw no need for this Court to labour

much on something which can be done by the trial Court. She made reference to the case of **Mwita Joseph Ikohi & 2 Others Vs The Republic, Criminal Appeal No. 60/2018** Court of Appeal of Tanzania (unreported).

This Court would agree with the learned Senior State Attorney that since the trial Court is vested with jurisdiction to try the case, the applicability of Section 29 as amended by the written Laws (Misc Amendments) Act, No. 3/2016 which restrict Court awaiting committal to grant bail for properties involved in the offence charged to Tshs. (10) ten Million only to be of less application.

The Court of Appeal in the above cited case of **Mwita Joseph Ikohi** (supra) at page 12 stated that "The word 'Court' in the above sub-Section (i.e. Section 36 (1) of the Economic and Organized Crimes Control Act Cap 200 (R.E. 2002) is defined in sub Section (7) of the same Section thus:-

"For the purpose of this Section, 'the Court' includes every Court which has jurisdiction to hear a petition for and grant bail to a person under charges triable or being tried under this Act".

The Court then held:

" Consequently, in the instant case Section 36(1) of the E.O.C.C.A could not on its own be the source of bail granting jurisdiction on the part of the lower Court". (Underscoring mine).

For reasons above stated, the Court of Monduli is vested with jurisdiction to deal with the matter.

Accordingly, bail application should be tabled and terms considered by that Court.

Matter referred to the proper Court. This case file is hereby marked closed.

Order Accordingly.

M.G. MZUNA

JUDGE

15/03/2022

Court: Ruling delivered this 15th day of March, 2022 in the presence of Akisa Mhando, learned Senior State Attorney and the Applicants.



A handwritten signature in blue ink, appearing to be "M.G. MZUNA", is written above the printed name.

M.G. MZUNA

JUDGE

15/03/2022