

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS CRIMINAL APPLICATION NO. 24 OF 2022

(Arising from Economic Crimes No. 7/2022 from the Resident Magistrate Court of Geita at Geita)

MAKOYE LUTAMBI @ MAGEHU..... APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

27th & 30th May, 2022

ITEMBA, J.

This is an application for bail pending Trial made under Section 36(1) of The Economic and Organised Crime Control Act, Cap 200 R.E. 2019, herein Cap 200. It is filed under Certificate of Urgency.

Brief facts which led to this application are that, one Makoye Lutambi herein the applicant, stand charged with Economic Crime Case No. 07 of 2022 before the Resident Magistrate Court of Geita at Geita. He is facing three counts namely; unlawful possession of monofilament contrary to Regulation 66(1)(a) and 66 (4) of the Fisheries Regulations GN. No 308 of 2009 as amended by Fisheries (Amendment) Regulation GN 492 of 2020,

unlawful possession of Gill Nets contrary to Regulation 66(1)(f) and 66 (4) of the Fisheries Regulations GN. No 308 Of 2009 as amended by Fisheries (Amendment) Regulation GN 492 of 2020 and Leading an Organised Crime contrary to paragraph 4(1)(a) of the First schedule to, and Section 57(1) and Section 60(2) of Cap 200 R.E 2019.

It is alleged that on 29th day of April 2022 at Nkomo area and Rubondo Island National Park within Geita District the applicant was found in unlawful possession of 4,096 pieces of monofilament net and that on the same day he was also found with 1,872 pieces of Gill nets of less than 3 inches in size.

It is further alleged that on divers dates between January and April 2022, at various places within Nkomo area Rubondo Island National Park within Geita District, the applicant intentionally and willfully organized and financed a criminal racket to wit financing fishermen to fish within Rubondo Island National Park without written authorization.

At the hearing of this application the applicant was represented by Mr. Joseph Kinando learned counsel while Ms. Mbuya, learned State Attorney appeared for the respondent.

Submitting for the applicant Mr. Kinando prayed for the contents of his affidavit to form part of this application and for the applicant to be granted bail as per the Chamber Summons. He explained to the Court that the offence is bailable and the applicant has reliable sureties and has never absconded bail before. He also stated that bail is a constitutional right. As there is no value indicated in the chargesheet he urged the court to grant favorable conditions.

Ms. Mbuya, did not object the application. She submitted that despite the charge having no value of the actual money which the applicant is charged with, this Court has jurisdiction as per S.29(4)(d) of Cap 200 and even the subordinate court has jurisdiction and that should the court decide to grant bail to the applicant the bail conditions should be strict in a manner that they will allow the availability of the applicant. Ms. Mbuya stated that execution of bail will be more practical if it is done in the Resident Magistrate Court of Geita. She finalized her submission by citing the persuasive decision of **Suleiman Masoud Suleiman and another v R** Misc. Criminal application No. 10 of 2020 where the High Court of Shinyanga granted bail to the applicant despite the fact that the chargesheet did not have actual value.

This court has measured the applicant's affidavit supporting the application, submissions by both parties and the fact that the offences which the applicant is charged with are bailable.

This being an 'economic offence' it was expected the chargesheet would exhibit the value thereof, which will show to what extent the applicant acts have affected the economy. That is why even the bail conditions under section 36 of Cap 200 are drafted with reference to the value of the offence which the accused (applicant) is charged with. However, the charge sheet is silent on that aspect of value. Nevertheless, being guided by **Suleiman Masoud Suleiman and another v R** (supra) I would agree that the applicant cannot be left unattended because the chargesheet against him has no specific value.

In terms of section 29(4)(a) of Cap 200, the District court and the court of a Resident Magistrate are vested with jurisdiction to grant bail for economic offences with a value of less than Tshs. ten million. If the value is above Tshs. ten million or more then the appropriate court is the High court (section 29(4)(d) of Cap 200. Therefore, basically there is no law which prohibits either the subordinate courts or the High Court from

granting bail to an applicant whose chargesheet is silent on the value. It is my view that if the charge of an economic offence is silent on the issue of value either the subordinate court or the High Court can grant bail because both courts are not prohibited by the law.

That being said, the offences against the applicant being economic, all bailable and not contested by the respondent, the application for bail is hereby granted. Abiding to the mandatory provisions of section 36(5) and (6) of Cap 200, the applicant is admitted to bail upon fulfilling the following conditions:

1. The applicant to deposit in court, cash amounting to half of Tanzanian Shillings Forty Million (40,000,000/=) or property/properties equivalent to half value of the said amount and the rest of the amount to be secured by execution of bond in writing.
2. The applicant has to provide two (2) sureties who are to execute a bond of Tanzanian Shillings Ten Million. (**Tshs. 10,000,000/=**) each and to satisfy the Court that sureties are either employees of the Government or possesses a National Identity Card issued by NIDA with permanent residence within Geita Region.

3. The applicant should not leave jurisdiction of the Court without prior permission from the Resident Magistrates Court of Geita at Geita.
4. Verification of sureties and bond documents to be executed by the the Resident Magistrates Court of Geita at Geita.
5. That applicant must surrender to the RCO's Office – Geita, his passport or travel documents (if any).
6. Applicant should appear before the Court on specified dates, time and place whenever he is needed.

It is so ordered.

DATED at Mwanza this 30th day of May, 2022.



L. J. ITEMBA
JUDGE