

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 45 OF 2022

GABRIEL IGNATUS MGANA APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

***(Arising from Economic Case No. 1 of 2022 pending before the
Resident Magistrate’s Court of Kivukoni at Kinondoni)***

RULING

14th and 14th April, 2022

KISANYA J.:

This application for bail pending trial is preferred under section 148(3) and 392A of the Criminal Procedure Act [Cap. 20, R.E. 2019] and section 36(1) of the Economic and Organized Crimes Control Act [Cap. 200, R.E. 2019] (henceforth “the EOCCA”). It is supported by the affidavit sworn by the applicant’s counsel one Mr. Mluge Karoli Fabian.

The facts leading to this application are reflected in the supporting affidavit as follows; The applicant, Gabriel Ignatus Mgana and two other persons were arraigned before the Resident Magistrate’s Court of Kivukoni at Kinondoni with an offence of Unlawful Possession of Government Trophy contrary to sections 85(1)(a), 86(1) and 86(c)

(ii) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 of the First Schedule and sections 57(1) and 60(2) the EOCCA. In terms of the charge sheet appended to the supporting affidavit, it is alleged that on the 28th day of February, 2022 at Ubungo National Housing area within Ubungo District in Dar es Salaam Region, the applicant and two other persons were found in possession of Government trophy to wit, 25 pieces of Elephant Tusks valued at TZS 480,242,973, the property of the Government of the United Republic of Tanzania. Thus, the applicant was inclined to lodge the present application because the value of property involved in the offence suppress the subordinate court's power to hear the application for bail and grant the same. It was also deposed in the supporting affidavit that the applicant resides in Dar es Salaam and that he has reliable sureties who will guarantee and procure his attendance in court.

When served with the application, the respondent did not file a counter affidavit to contest the facts deposed in the supporting affidavit

At the hearing of the application, the applicant was represented by Mr. Mluge Karoli Fabian whilst Mr. Shindai Michael, learned State Attorney appeared for the respondent.

When invited to submit in support of the application, the applicant's counsel adopted the supporting affidavit to form part of his submission. He reiterated that the applicant is charged with bailable offence and that he has reliable sureties. Therefore, prayed that the application be granted.

Ms. Shindai Michael informed the Court that the respondent was not contesting the application. He asked me to consider section 36(4) and (5) of the EOCCA.

It is common ground that the applicant and other two persons are charged with bailable offences. It is also not disputed that the applicant and his co-accused have not been committed to the Corruption and Economic Crimes Division of the High Court and that the value involved in the offence laid against them is above three hundred million shillings. In that regard this Court is vested with the power to hear and determine the present application for bail. This is pursuant to section 29(4)(a) and (d) of the EOCCA as amended by section 35 of the Written Laws (Miscellaneous Amendments) Act, 2022.

It is an established principle that bail is a constitutional right which is based the presumption of innocence and the right to personal

freedom guaranteed under Articles 13(6)(b) and 15(1) of the Constitution of the United Republic of Tanzania, 1977 (as amended). The law is also settled the court has discretionary power to grant or refuse application for bail. However, such discretionary power must be exercised judiciously. In the case of **Patel vs R** (1971) HCD No. 391, this Court held the view that, the main factor to be taken into account in determining application for bail is whether the applicant will be available during trial. Other factors are, whether the accused is likely to commit further offence if he is allowed out on bail in which case his character is certainly not irrelevant; whether the accused is likely to interfere with the investigation by influencing witnesses or otherwise; whether the gravity of the accusation or the severity of the punishment of conviction results would prompt an accused to jump bail.

I have stated earlier that the applicant undertook to bring reliable sureties who will guarantee and procure his attendance in court. I have also considered that the application is not contested by the respondent. In view of the foregoing, I find no reason of refusing the application.

Next on consideration is the bail conditions. The answer to this issue is provided for under section 36(5) and (6) of the EOCCA quoted

herunder:

"(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 passport or any other travel document; and

(d) restriction of the movement of the accused to the area of the town, village or other area of his residence.

(6) The Court may, in addition to the mandatory conditions prescribed in subsection (4) impose any one

or more of the following conditions, namely-

- (a) requiring the accused to report at specified intervals to a police station or other authority in his area of residence;*
- (b) requiring the accused to abstain from visiting a particular locality or premises, or association with certain specified persons;*
- (c) any other condition which the Court may deem fit to impose in addition to the preceding conditions,*

which appear to the Court to be likely to result in the appearance of the accused for the trial or resumed trial at the time and place required or as may be necessary in the interest of justice or for the prevention of crime

Reading from section 36(5) of the EOCCA, it is clear that the conditions set thereto must be imposed by the court. In event the case involves more than accused person, the principle underlined in the case of **Silvester Hillu Dawi & Stephen Leons Mwambene vs The Director of Public Prosecutions**, Criminal Appeal No. 250 of 2006 (unreported) is to the effect that, half the amount or value of actual money or property required to be paid or deposited for purposes of bail has to be shared by the respective accused persons.

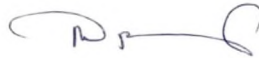
For the reasons stated herein, I hereby grant the application and order that the applicant be admitted on bail pending trial on the following conditions: -

1. The applicant shall deposit to the custody of the court a sum of TZS. 80,040,495.5 /= in cash or a title deed or evidence satisfactorily to prove existence of immovable property/properties valued at TZS Tshs. 80,040,495.5 /=.
2. The applicant shall have two reliable sureties with fixed place of abode within Dar es Salaam Region.
3. Each surety shall execute a bond of TZS 40,020,000/=.
4. Each surety shall produce an introductory letter from his or her employer or local authorities and a copy of recognized identity card.
5. The applicant shall surrender his passport or travelling document (if any).
6. During the pendency of the case before the Resident Magistrate's Court of Kivukoni at Kinondoni, the applicant shall not travel outside Dar es Salaam Region without a prior written approval of the Resident Magistrate assigned with the case.

For purposes of convenience, the verification of the sureties and bond documents shall be executed by the Resident Magistrate assigned with the case pending before the Resident Magistrate's Court of Kivukoni at Kinondoni.

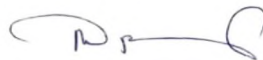
It is so ordered.

DATED at DAR ES SALAAM this 14th day of April, 2022.



S.E. Kisanya
JUDGE

Court: Ruling delivered this 14th day of April, 2022 in the presence of Mr. Mluge Karoli Fabian, leaned advocate for the applicant and Mr. Shindai Michael, learned State Attorney for the Respondent.



S.E. Kisanya
JUDGE
14/04/2022