

**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. 268 OF 2021**

**SOLOMON MAKURU MTENYA @ KUEHMBE ..... 1<sup>ST</sup> APPLICANT**

**MUSSA ABDUL LIGAGABILE ..... 2<sup>ND</sup> APPLICANT**

***VERSUS***

**THE REPUBLIC.....RESPONDENT**

***(Arising from Economic Case No. 62 of 2021 pending at the Resident  
Magistrate's Court of Dar es Salaam at Kisutu)***

**RULING**

7<sup>th</sup> and 7<sup>th</sup> February, 2022

**KISANYA J.:**

The applicants, Solomon Makuru Mtenya @ Kuhembe and Musa Abdul Ligagabile (hereinafter referred to as the 1<sup>st</sup> and 2<sup>nd</sup> applicants, respectively) and other ten persons (who are not subject to this application) were arraigned before the Resident Magistrate's Court of Dar es Salaam at Kisutu for offences of leading organized crime contrary to paragraph 4(1)(a) of the First Schedule to, read together with sections 57(1) and 60(2) the Economic and Organized Crimes Control Act, Cap. 200 R.E. 2019 (the EOCCA) and unlawful dealing in trophies contrary to paragraph 14(d) of the First Schedule to, and sections 80(1) and 84 (1) and Part of the Wildlife Conservation Act, 2009 read together with section

57(1) of the EOCCA.

In addition to the above counts, other thirty (33) counts on unlawful dealing in trophies were preferred against different accused persons, including the first applicant who faces the 9<sup>th</sup>, 11<sup>th</sup>, 20<sup>th</sup>, 28<sup>th</sup>, 33<sup>rd</sup>, 34<sup>th</sup> and 35<sup>th</sup> counts. The property involved in all counts is government trophies to wit, elephant tusks. It is also on record that the value of elephant tusks subject to the offences in the case at hand is far beyond ten million shillings. For instance, the 1<sup>st</sup> and 2<sup>nd</sup> counts preferred against the applicants and 10 others involve Government Trophies to wit, 660 pieces of elephant tusks valued at Tshs 4,570,347,751 on each count.

Therefore, the applicants have moved this Court to be pleased to admit them on bail pending trial. The application is made under sections 29(4) and 36(1) of the EOCCA and is supported with the affidavits sworn and affirmed by the 1<sup>st</sup> and 2<sup>nd</sup> applicants, respectively. Pursuant to both affidavits, the Resident Magistrate's Court of Dar es Salaam at Kisutu is not vested with jurisdiction to entertain the applicants' bail application. It is deposed further that, the applicants are charged with bailable offences, the applicants have reliable sureties and that they are ready to abide by the bail conditions.

It is appropriate to note here that, the respondent did not file counter affidavit. Therefore, in terms of the established principle, issues related to facts deposed in the applicants' affidavit are not challenged.

Before this Court, the applicants appeared in person, unrepresented, while the Respondent was represented by Ms. Monica Ndakidemi, learned Senior State Attorney.

When invited to submit in support of the application, both applicants urged this Court to admit them on bail pending trial. They also prayed that the principle of sharing be considered at the time imposing bail conditions.

Ms. Monica supported the application on the reason that the applicants are charged with bailable offences. However, she called upon this Court to impose bail conditions in terms of section 36(4) and (5) of the EOCCA.

I have considered the chamber summons, supporting affidavits and submissions by the parties. It is not disputed that the applicants are charged with bailable offences. Parties are also at one that the value of Government Trophies involved in the offences preferred against the applicants is more than ten million shillings. Considering that the case is still pending before the subordinate court for committal to the Corruption

and Economic Crimes Division of the High Court, the mandate to hear and determine the petition for bail is vested in this Court. This is pursuant to section 29(4) of the EOCCA cited in the chamber summons. Therefore, the application is competent before this Court.

It is settled law that bail is a constitutional right and premised on the principle of presumption of innocence and the right to personal freedom enshrined under Articles 13(6)(b) and 15(1) of the Constitution of the United Republic of Tanzania, 1977 (as amended), respectively. In determining whether to grant or refuse bail application, the court considers the circumstances of each case. It is also apt to take into account that, one of the reasons for remanding the accused person in custody is to ensure that he is available during the trial. Therefore, the main factor for consideration in the application for bail is whether the applicant will be available during trial. Others 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. [See the case of **Patel vs R** (1971) HCD No. 391].

This Court has considered that the applicants are charged with bailable offences and that they undertake to bring reliable sureties and abide by bail conditions. Considering further that the Republic does not object the application, I find no reason of not admitting the applicants on bail pending trial.

The next issue is on the conditions to be imposed at the time of admitting the applicants on bail. This issue should not detain me. As rightly submitted by Ms. Monica that, the Court is guided by the provisions of section 36(5) and (6) of the EOCCA which reads:

*"(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*

It is clear that, the provision of section 36(5) of the EOCCA is couched in mandatory terms. Thus, the conditions set thereto must be

imposed by the Court at the time of admitting the accused person on bail pending trial. This includes the condition of requiring the applicant to deposit cash or other property equivalent to half the amount or value of actual money.

Applying the principle of sharing established in the case of **Silvester Hillu Dawi & Stephen Leons Mwambene vs The Director of Public Prosecutions**, Criminal Appeal No. 250 of 2006 (unreported), the amount or value of actual money to be deposited in this case is as follows:

- (a) The total value of elephants tusks involved in the 1<sup>st</sup> and 2<sup>nd</sup> counts preferred against 12 persons, the applicants inclusive is Tshs 9,140,595,502. Thus, the each applicant is required to deposit Tshs. 380,862,312.58 in cash or equivalent properties in respect of both counts.
- (b) The 9<sup>th</sup> count was laid against the 1<sup>st</sup> applicant and one other person. Since it involves the elephant tusks valued at Tshs. 130, 260,000, the 1<sup>st</sup> applicant is required to deposit Tshs 32,365,000/= in cash or equivalent properties.
- (c) The 11<sup>th</sup> count was preferred against the 1<sup>st</sup> applicant and one other person. It involves the elephant tusks valued at Tshs.

65,130,000. Therefore, the 1<sup>st</sup> applicant is required to deposit Tshs. 16,282,500/= in cash money or equivalent properties.

- (d) The 20<sup>th</sup> count was levelled against the 1<sup>st</sup> applicant and two other persons. Since the elephant tusks involved in this count are valued at Tshs. 2,388,110,000, the 1<sup>st</sup> applicant is required to deposit Tshs.398,018,333.33 in cash or equivalent properties.
- (e) The 28<sup>th</sup> count was preferred against the 1<sup>st</sup> applicant and one other person. Considering that the elephant tusks involved in this count are valued at Tshs. 293,083,000, the applicant is required to deposit Tshs. 72,270,750/= in cash or equivalent properties.
- (f) The 33<sup>rd</sup>, 34<sup>th</sup> and 35<sup>th</sup> counts were preferred against the 1<sup>st</sup> applicant and two other persons. Considering that the elephant tusks involved in all three counts are valued at Tshs.130,260,000, the 1<sup>st</sup> applicant is required to deposit Tshs. 21,710,000/= or equivalent properties.

From the foregoing, the actual money or equivalent properties to be deposited by the 1<sup>st</sup> and 2<sup>nd</sup> applicants is Tshs. 921,508,895.91/= and Tshs. 380,862,312.58/= respectively. The applicants also required to



comply with other bail conditions imposed by this Court under section 36(5) and (6) of the EOCCA.

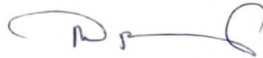
To this end, the application is hereby granted and the applicants are admitted on bail pending trial subject to the following conditions:

1. The 1<sup>st</sup> applicant shall deposit to the custody of the court a sum of Tshs. 921,508,895.91/= in cash or a title deed or evidence satisfactorily to prove existence of immovable property/properties valued at Tshs. 921,508,895.91/=.
2. The 2<sup>nd</sup> applicant shall deposit in court a sum of Tshs. 380,862,312.58/= in cash or a title deed or evidence satisfactorily to prove existence of immovable property/properties valued at Tshs. 380,862,312.58/=.
3. Each applicant shall have two reliable sureties with fixed abode within Dar es Salaam Region.
4. Each surety shall execute a bond of Tshs. 460,754,447.95= for the 1<sup>st</sup> applicant and Tshs. 190,431,146.29 for the 2<sup>nd</sup> applicant.
5. Each surety shall produce an introductory letter from his or her employer or local authorities and a copy of recognized identity card.
6. Each applicant shall surrender his passport or travelling document (if any).

7. During the pendency of the case at the Resident Magistrate's Court of Dar es Salaam at Kisutu, the applicant shall not travel outside Dar es Salaam Region without a prior written approval of the Resident Magistrate assigned with the case.
8. Verification of the sureties and bond documents shall be executed by the Resident Magistrate assigned with the case pending at the Resident Magistrate's Court of Dar es Salaam at Kisutu.

It is so ordered.

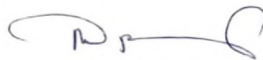
DATED at DAR ES SALAAM this 7<sup>th</sup> day of February, 2022.



S.E. Kisanya  
JUDGE

Court: Ruling delivered this 7<sup>th</sup> day of February, 2022 in the presence of the applicants and Ms. Monica Ndakidemi, learned State Attorney for the Respondent. B/C Salma present.

Right of appeal explained.



S.E. Kisanya  
JUDGE  
7/02/2022

