

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC CRIMINAL APPLICATION No. 65 OF 2022

(C/F Economic Case No 8 of 2022 in District Court of Arusha at Arusha)

ELIBARIKI ABRAHAM @ LAROYA APPELLANT

VS

REPUBLIC RESPONDENT

RULING

Date of last order 02/02/2023

Date of judgment 10/03/2023

BADE, J.

The present Application is for Bail pending trial of the Economic Case No 8 of 2002 which is pending before the District Court of Arusha at Arusha. The applicant stand charged with two counts of unlawful possession of government trophy and unlawful dealing in government trophies contrary to section 86(1) and (2) (b) of the **Wildlife Conservation Act, No 5 of 2009** read together with Para 14 of the 1st schedule to, and section 57(1) and 60(2) both under the **Economic and Organized Crimes Control Act [Cap 200 RE 2019]** as amended by section 16(a) and 13(b) of the **Written Laws Miscellaneous Amendment) Act No 3 of 2016.**

The Application is preferred under section 148 (3) of the **Criminal Procedure Act Cap 20 RE 2022**, section 29(4) (d) and section 36(1) (5) (6) and (7) of the **Economic and Organized Crimes Control Act [Cap 200 RE 2019]**; and is supported by the Affidavit of Elibariki Abraham @Laroya which is sworn on 30th November 2022. The Respondent did not file any Counter Affidavit nor did they filed any submissions despite these orders being prayed and granted against a filing schedule. Upon the matter being scheduled for Ruling and entering appearance of the learned counsel for the applicant, this Court prompted the Applicant to address the issue of the amount / value in the charge sheet in view of the offence under which the applicant stand charged. In that case the Ruling date had to be rescheduled.

The Counsel for the Applicant submitted that Bail is a constitutional right of the Accused person as provided for under **Art 13 (6) (b) of the 1977 Constitution of the United Republic of Tanzania** as amended from time to time; and that the Applicant is equally entitled to be granted bail as he awaits trial on the principle that he is innocent until proven guilty. The Applicant Counsel insist that the Applicant herein has never been convicted despite being charged severally.

It is well noted that the offence that the applicant is charged with is a bailable offence as averred by the counsel, there being no legal provision prohibiting the granting of bail pending trial. That being the case it should also be understood that, in such cases, the Court in consideration of such Applications is expected to exercise its discretion judiciously taking into account all important factors relating to granting of bail.

In its affidavit the applicant deponed that he has been charged and discharged severally through Economic Cases no 58 of 2020 and No 32 of 2021 respectively, both in the Resident Magistrate Court of Arusha, and admitted that he now stand charged with unlawful possession of government trophy which are 16 pieces of Elephant Tusks equivalent to killing 4 Elephants valued at USD 60,000 equivalent to TZS 138, 540,000. He deponed further that he has no history of jumping bail, and is ready to execute bond and reliable sureties on terms as shall be prescribed by the Court


The discretionary powers involved in the process of granting or refusing bail is a judicious process in which the Court in a free, wise and independent mind considers the relevant law, principles, rules and all the circumstances surrounding the case at hand to reach the right decision that guarantees a proper and just end through the course of pursuing justice. The individual right to personal freedom on one hand, and the need to protect the interests of the society at large within legal, social, economic and political environment of the society on the other are the balancing symmetry.

The other factors that the Court would customarily consider dependent on the particular case and circumstances include the seriousness of the offence, the severity of punishment involved if convicted, how reliable is the accused person including their sureties, residence or domicile, how long have they been in custody, their age, physical condition, and the nature of evidence in support of the charge if hearing has started etc.

In the case of **Bhagwanji Kakubhai vs. R, 1 TLR 144**, it was held that the test applied in such a judicial exercise was whether the granting of the

application will be detrimental to the interests of justice, good order and the keeping of public peace. Deciding on whether to grant or refuse bail to an accused person is therefore an exercise of balancing and deciding between two competing claims. The understanding being that interests of justice require that there will be a fair trial that the applicants (accused person's) freedom is not unjustifiably denied and that if released on bail the applicants will not jump bail or interfere with the police investigations or witnesses. On the other hand interests of State being that public peace and good order require that while on bail the accused person will not commit other offences, cause terror or breach peace and tranquility.

The question before me is necessarily whether in the present application there is any evidence to believe that if the application is granted bail, then public interests will be jeopardized. Antecedent to this question is also an issue whether there are any solid reasons for denying the applicant his constitutional right to liberty?

The Respondent Republic in essence in default has not objected to the application as not only have they not filed any counter affidavit but also any submissions. It suffices that as alluded to in various cases, a decision to grant or refuse bail depends on many factors. They include the gravity of the offence charged, and also a provision of law can prohibit grant of bail. The Court also finds that, since bail is open against the offence for which the applicants are charged with, and there is no objection raised to not provide the same, I find no any plausible reasons to deny bail to the applicant. 

In the premise, it is hereby held that Bail pending the determination of committal proceedings and henceforth pending trial is therefore granted to the applicant as prayed. Having granted bail to the applicant as pleaded this Court now proceed to consider the conditions and terms of the granted bail.

In determining the corresponding conditions for the said grant of bail, the Court is to be guided by i) the seriousness of the offence ii) conditions that will ensure availability of the applicant for attendance at the hearing on the dates set to answer to the charges against him. The conditions are either fixed by the Court discretionally or by the law which could enumerate the conditions under which bail is to be granted. "The guiding principle being that the conditions have to be reasonable even where the Court is exercising its discretion"

Foe the foregoing application, bail conditions are set by law through section 36(5) of the Economic and Organized Crime Control Act, where the law provides for mandatory bail conditions and terms such as, for an applicant to deposit cash half the amount of the actual money or property equivalent in value to half the amount of the amount stated in the charge. In the present case the amount in the charge in **Economic Crime Case No. 08 of 2022** is **TZS 138, 540,000 /-**. Half the amount would be is **69,270/-** and in that case therefore

1. The Applicant should deposit cash or properties' title deeds with an approved value worth TZS **69,270/-**

2. The Applicant to produce two (2) reliable sureties whereby each one is to execute a bond of **TZS 6,000,000;** both of which should have a fixed place of abode within the jurisdiction of the trial Court.
3. Each surety should produce an introductory letter from his or her employer; or from the local authorities as well as a copy of officially recognized form of identity.
4. The Applicant to surrender his passport and any other travelling documents at the District Court of Arusha.
5. The Applicant to appear before the Court where the current proceedings are held on specified dates and times as scheduled by the Court where his matter is proceeding.
6. The Applicant is restricted from moving out of the jurisdiction of the District Court Arusha at Arusha without permission of the District Magistrate Incharge, Arusha.
7. Verification and scrutiny of the bond documents for the sureties and bond documents shall be executed by the Deputy Registrar of the High Court, Arusha District Registry, who shall ensure all the Bail Conditions are complied with before the Applicant is released.

It is so Ordered

DATED at ARUSHA this 10th day of March 2023.



A.Z. BADE

JUDGE

Ruling delivered in chambers at **ARUSHA** this **10th** day of **March 2023** ,
before the parties.



A handwritten signature in blue ink, appearing to read "A.Z. Bade".

A.Z. BADE

JUDGE

10/03/2023