

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO. 103 OF 2023

(C/O Arising from Economic Crimes Case No. 33 of 2023 in the Resident Magistrate
Court of Dar-es-Salaam at Kisutu)

TULUSUBYA BUNINI KAMALAMO 1st APPLICANT
JAMES THOMAS BANGU 2nd APPLICANT
MOHAMED HAMADI KHAIS 3rd APPLICANT
ABDALLAH ALLY MLWALE 4th APPLICANT
DEOGRATIUS BENEDICTO LUTATAZA 5th APPLICANT
JUDICA NGOWO @ LIGHTNESS MUNIS @
LIGHTNESS SAMWEL MUNIS 6th APPLICANT
FEBRONIA NANGWA 7th APPLICANT
GLORY JOHN EUGEN 8th APPLICANT
JOSEPHINE GADIEL SANDEWA 9th APPLICANT
DORICAS GABRIEL GWICHALA 10th APPLICANT
JESCA JONATHAN LUTAGONZIBWA 11th APPLICANT
ALINANUSWE OBEL MWASASUMBE 12th APPLICANT
PATRICK MAZENGO CHIBWANA 13th APPLICANT
ALLY BARUAN 14th APPLICANT
KHALID JAMES NYAKAMANDE 15th APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date: 09 & 11/08/2023

NKWABI, J.:

This application for bail has been brought under a certificate of utmost urgency and a chamber summons. The applicants are prompting this court to grant them bail. The chamber summons is made under section 29(4) (d) and 36(1) and 5(a) of the Economic and Organized Crimes Control Act Cap. 200 R.E. 2019. The applicants were arraigned before the resident magistrate court of Dar-es-Salaam at Kisutu facing a charge sheet that comprises 143 counts in an economic crimes case number 32/2023.

Truly, in the Resident Magistrate Court of Dar-es-Salaam, the applicants stand, charged with leading organized crime contrary to paragraph 4(1) (a) of the First Schedule to, and sections 57(1) and 60(2) both of the Economic and Organized Crimes Control Act, Cap. 200 R.E. 2022 among other counts.

The application is supported by the affidavit of the counsel for the applicants.

The application was not resisted by the respondent, as the respondent did not file a counter affidavit. It is overused law that where an application is not countered through an affidavit in reply, that application is deemed to be uncontroverted, see **Martin D. Kumalija & 117 Others v. Iron and Steel Ltd. Civil**, Application No. 70/18 of 2018 (CAT), (unreported) where it was stated that:

"As hinted earlier, the respondent, for obviously an inexplicable cause, filed no affidavit in reply after being served with the notice of motion. We must hasten to observe, therefore, that the absence of an affidavit in reply means that averments in the supporting affidavit are uncontroverted."

Despite the above position of the law, on the hearing that proceeded by way of oral submissions, Mr. Mafuru, learned counsel for the applicants pressed for lenient bail conditions. It was his view that the applicants be given to execute bail bond instead of depositing cash money or title deed equivalent to half of the value of the charge. He commended **Nasib Mmbagga & 2 Others v. Republic**, Miscellaneous Criminal Application No. 187 of 2021, HC (unreported). That prayer was brought by the counsel for the applicants after Ms. Doroth Massawe, the learned Principal State Attorney had asked this Court to issue bail while considering the offence.

I have considered the respective stances of both parties to this application. The position of this Court in **Mmbagga's** case (supra), however, with respect, reminds me of the warning echoed by Makame J., as he then was,

in **Republic v. Agnes Doris Liundi** [1980] TLR 38 where he had these to say:

"This problem judges have in this regard, and one can quite properly argue that it is in the interest of society that judges should be confronted with this problem, for justice must be, and continue to be, according to the law, and judges must never feel free to act on whims, is expressed with characteristic clarity and contemplative depth by Mr. Justice CARDOZO in "The Nature of Judicial Process" (1920) when he says:

The Judge, even when free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or goodness. He is to draw his aspirations from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence."

In the circumstances, I am inclined to follow the law, so long as, that law has not been held to be unconstitutional by a court of law in this land and the counsel for the applicants did not suggest that is the situation. It appears

to me that the intention of the Parliament in enacting such provisions of the law was to capture the gravity of the offence and do away with the possibility of accused person absconding bail just as contemplated in the Bail Guidelines. In the circumstances, I am not bound by the decision of this Court in **Mmbagga's** case.

Nevertheless, I have noted that the 1st and 2nd counts are for all accused persons. As such I grant bail to all applicants and issue bail conditions in terms of section 36 (1) (4)(e) and section 36(5) (a) of the Economic and Organized Crimes Control Act as underneath:

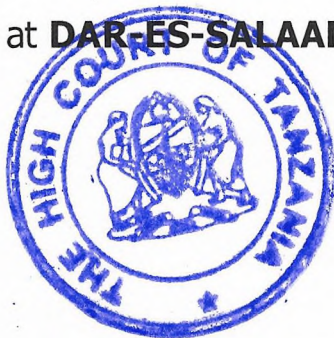
1. The applicants shall be out on bail upon each of them depositing cash money to the tune of T.shs. 297,719,950 or each of them deposit title deed of immovable property with a value equivalent to T.shs 297,719,950, either way when multiplied by 15, the number of the accused persons in the charge sheet, is equivalent to half of the value of the loss allegedly caused to Dar-es-Salaam City Council.
2. The applicants shall each of them have two reliable sureties who shall execute bail bond at T.shs 297,719,950 each to cover a half of the amount that is allegedly been caused loss to the specified authority in respect of bail. Each surety shall have introductory letter from local


government leader(s) of their locality where they reside or from their employer if any.

3. Since the applicants ought to appear in the trial court for committal proceedings, such appearance on the fixed date shall be deemed as reporting to the authority.
4. The applicants have to surrender any travel document that they possess, if any.
5. The applicants shall not travel outside the jurisdiction of the High Court Dar-es-Salaam Zone during the pendency of economic crimes case the subject of this application for bail, save with the permission of the learned presiding Magistrate.
6. Ascertainment of compliance with the bail conditions set hereinabove shall be conducted by the Deputy Registrar of the High Court.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 11th day of August, 2023.




J. F. NKWABI
JUDGE