

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT
(MUSOMA SUB REGISTRY)
AT MUSOMA

ORIGINAL JURISDICTION

Misc. CRIMINAL APPLICATION No. 29 of 2023

*(Arising from the District Court of Bunda at Bunda in Economic
Crimes Case No. 17 of 2023)*

- 1. AMOS JEREMIAH KUSAJA**
- 2. SANGI MAKENGE RUGE**
- 3. ABBAS NDYAMUKAMA**
- 4. HESBONE PIUS BATURE**
- 5. EMMANUEL SIMON MBOJE**
- 6. SHAABAN CHESSEBE NDALU**
- 7. THOMAS MICHAEL KWEKA**
- 8. GABRIEL MUGINI KENENE**
- 9. MSETI MASANCHU MASWI**

..... **APPLICANTS**

Versus

THE REPUBLIC **RESPONDENT**

RULING

23.10.2023 & 23.10.2023

Mtulya, J.:

Mr. Amos Jeremiah Kusaja and twelve other accused persons are prosecuted at the **District Court of Bunda at Bunda** (the district court) in **Economic Case No. 17 of 2023** (the case) for allegations of leading organized crimes contrary to section 57 (1) and 60 (2) and Paragraph 4 (1) (a) of the First Schedule to the **Economic and Organised Crimes Control Act** [Cap. 200 R.E. 2019] as amended by

section 35 of the **Witten Laws (Miscellaneous Amendment) Act, No. 1 of 2022** (the Economic Crimes Act), and abuse of position contrary to section 31 of the **Prevention and Combating of Corruption Act** [Cap. 329 R.E. 2022 read together with section 57 (1) and 60(2) and Paragraph 21 of the First Schedule to the Economic Crimes Act.

On 17th October 2023, the accused persons were arraigned before the district court to reply the complaint of the Republic which shows that on diverse dates between 1st June 2021 and 1st July 2021, at various places within Bunda District in Mara Region, intentionally organized a criminal racket to wit: obtaining fraudulently Tanzanian Shillings Three Hundred Fifty-One Million Six Hundred Thirty-Two Thousand Seventy-One (Tshs. 351,632,071) Only, from Bunda District Council.

Being aware of their statutory and constitutional rights to freedom of movement and presumption of innocence, nine (9) out of the thirteen (13) accused persons, have instructed **Mr. Leonard Elias Magwayega**, learned counsel to draft and file the present application under a certificate of urgency to display that: the applicants have remained in Bunda prison custody since 17th October 2023 due to the fact that they could not apply for bail pending their case at the district court as the district court has no mandate to grant the same. Mr. Magwayega contended further that: the

applicants are head of their families with children, wives and other dependents, and that if the application is not resolved urgently, they will suffer irreparably.

Today afternoon, Mr. Magwayega was summoned in this court to argue for the application and in his brief submission, he prayed this court to adopt affidavits of all nine (9) applicants and if it so wishes grant the application in favor of all nine (9) applicants. The Republic on the other hand had marshalled **Mr. Tawabu Yahaya Issa** and **Ms. Natujwa Bakari**, learned State Attorneys to reply the application. Being aware of section 148 (1) & (5) of the **Criminal Procedure Act** [Cap 20 R.E. 2022] (the Criminal Procedure Act) and section 29 (4) and 36 of the Economic Crimes Act, Mr. Tawabu and Ms. Bakari did not protest the move.

I have perused the present record, the law regulating bail in circumstances like the present one and precedents emanating in this court and Court of Appeal on the subject. The record shows that the applicants were arraigned before the district court to reply the indicated allegation. The law under section 148 (1) of the Criminal Procedure Act and section 29 (4) of the Economic Crimes Act allow bail in cases like the present one. However, section 29 (4) of the Economic Crimes Act as amended by section 35 of the **Written Laws (Miscellaneous Amendment) Act, No. 1 of 2022**, provides that when the value of money involved in the offence is more than Three

Hundred Million, bail applications must be registered and decided in this court.

The practice available in this court and the Court of Appeal in applications like the present one shows that: first, article 13 (2) (b) of the Constitution, section 148 (1) of the Criminal Procedure Act and section 29 (4) of the Economic Crimes Act are customarily invited when granting bail; second, in granting and listing bail conditions, this court is guided by the provisions in section 36 (5) (a)-(d) & 36 (6) (a) – (c) of the Act; and finally, this court may give any conditions which thinks fit for interest of justice and accountability of applicants.

There is a large bunch of precedents in place displaying the above cited practice (see: **Francis Davis Mchacky & Ten Others v. Republic**, Misc. Criminal Economic Application No. 14 of 2022; **Leonard Revocatus Mitti & Another v. Republic**, Misc. Criminal Application No. 52 of 2021; **Abadi Seif Said & Seven Others v. Republic**, Misc. Criminal Application No. 7 of 2020; **Adam Genes @ Mkini v. Republic**, Misc. Criminal Application No. 64; **Freeman Aikael Mbowe & Another v. Republic**, Criminal Appeal No. 344 of 2018; **Director of Public Prosecutions v. Dennis & Eleven Others**, Criminal Appeal Case No. 87 of 2019 and **Prof. Dr. Costa Ricky Mahalu & Another v. The Hon. Attorney General**, Miscellaneous Civil Cause No. 35 of 2007).

The mostly quoted passage in the precedents is found at page 30 in the Ruling of **Prof. Dr. Costa Ricky Mahalu & Another v. The Hon. Attorney General** (supra) that:

*It is generally accepted that once an offence is bailable, the applicable principle requires that the conditions must be reasonable...**However, when it comes to the application of the Act [the Economic Crimes Act]** ... Once charged, **a person who does not have the requisite amount will have no option but to be deprived of his liberty** not because the offence is not bailable but because he cannot meet the condition of depositing the requisite amount of money...*

(Emphasis supplied).

The reasoning of this court in the precedent is reflected at page 33 of the Ruling in the following words:

*It is indisputable fact that the Act [the Economic Crimes Act] was enacted **for purpose of control and eradication of economic crimes with a view of protecting public property and national economy as a whole**. It is important legislation in view of challenges facing our growing economy...*

(Emphasis supplied).

This reasoning of the court is within the purpose behind enactment of the provisions in section 36 (5) & (6) of the Act and has been followed by several other precedents of this court (see: **Francis Davis Mchacky & Ten Others v, Republic** (supra); **Salum Abeid Mbaya & Ten Others v. Republic**, Consolidate Misc. Economic Applications Nos. 68 & 69 of 2019; **Said Bakari & Another v. Republic**, Misc. Criminal Economic Application No. 79 of 2020; **Juma Kambi Kong'wa & Another v. Republic**, Misc. Economic Cause No. 16 of 2017; and **Fausta Gaitan Lumoso & Three Others v. Republic**, Misc. Economic Cause No. 40 of 2017.

It has been the practice of this court to follow its previous decisions on similar issue without any reservations in favour of predictability and certainty of decisions determined in this court. This application shall face the same course. However, I am aware that when there are more than one applicant in the same application, the principle of sharing the amount of value of money involved in an offence is invited (see: **Francis Davis Mchacky & Ten Others v, Republic** (supra); **Silvester Hillu Dawi and Others v. Director of Public Prosecutions**, Criminal Appeal No. 250 of 2006; **Abeid Mussa & Another v. Republic**, Misc. Criminal Application No. 9 of 2017; **Salum Abeid Mbaya & Ten Others v. Republic** (supra); **Said Bakari & Another v. Republic**, Misc. Criminal Economic Application No. 79 of

2020; and **Shaban Didas Bifandimu @ Bifa & Another v. Republic**, Misc. Criminal Application No. 32 of 2022).

As I indicated above in this Ruling, this court is authorized to impose any conditions which may deem fit for the interest of justice and accountability on the part of applicants. Having said so, and considering the conditions under the provisions of section 36 (5) (a)–(d) & (6) (a)–(c) of the Act, and regarding several cited precedents in this Ruling, I am moved to grant bail to the applicants pending hearing and final determination of the case. However, the applicants shall be released upon fulfilling the following listed conditions:

1. Each Applicant shall surrender his passport or any other travelling documents, if any, to the Deputy Registrar of this Sub Registry;
2. Each applicant shall report to the Deputy Registrar of this Sub Registry or District Resident Magistrate In-charge of the Bunda District Court at Bunda once in every last Monday of a month and sign a specific register, if need be;
3. Each applicant shall not travel out of the State of Tanzania without prior written leave of the Deputy Registrar of this Sub Registry;

4. Each applicant should have two sureties, and one must be employee of the government, local government, government agency, or any other organization recognized under the law and must be resident within the State of Tanzania;
5. Each applicant's sureties should submit letters and certified copies of identity cards from their respective employers;
6. Each applicant's sureties should produce in court letter of introduction from their respective Street or Village Chairman;
7. Each applicant must enter appearance in court on every date when the case is scheduled for mention, hearing or any other order or direction of the District or High Court;
8. Each applicant's sureties shall undertake to make sure that his/her applicant is available and enter attendance in court whenever required;
9. Each applicant shall deposit cash in sum Tanzanian Shillings Twenty Million Only (20,000,000/=) or in case the applicant decides to deposit immovable or approved property, he/she shall deposit either title deed supported by Valuation Report from the Government Valuer or documents justifying the approved property from the appropriate authority displaying equivalent or more amount of money cited above; and

10. Each of the applicant's sureties shall sign a bond of sum of Tanzanian Shillings Ten Million Only (10,000,000/=) as a security for appearance of the respective applicant in court.

The above ordered bail conditions shall be supervised and sureties certified by the Deputy Registrar of this Sub Registry.

Ordered accordingly.

Right of appeal explained.

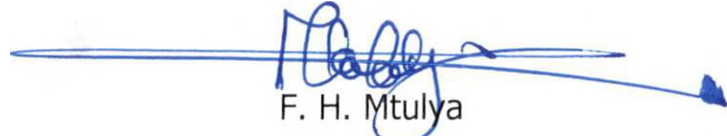



F. H. Mtulya

Judge

23.10.2023

This Ruling was delivered in Chambers under the Seal of this court in the presence of the applicants' learned counsel, **Mr. Leonard Elias Magwayega** and in the presence of **Mr. Tawabu Yahaya Issa** and **Ms. Natujwa Bakari**, learned State Attorneys for the Republic


F. H. Mtulya

Judge

23.10.2023