

**IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA**

MISC. ECONOMIC CAUSE NO. 33 OF 2023

(Arising from Economic case No. 17 of 2023 pending in the District Court of Bunda at Bunda)

NICO AMANYISE KAYANGE1ST APPLICANT

MONA SHOMARY BITAKWATE.....2ND APPLICANT

ALLAN ARON.....3RD APPLICANT

NURU YAHYA YUNGE.....4TH APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

31ST & 31ST October, 2023

M. L. KOMBA.:

This is a ruling in respect of the application for bail by above mentioned applicants. The application was brought with chamber summons made under section 392(A)(1) and (2) of the Criminal Procedure Act, Section 29 (4) (a) and 36 (1) of Economic and Organized Crime Control Act, Cap 200 RE 2022 while accompanied by affidavit of **NICO AMANYISYE KAYANGE, MONA SHOMARY BITAKWATE, ALLAN ARON** and **NURU YAHYA YUNGE**, That On 30th October 2023, the applicants were arraigned before the district court to reply the complaint of the Republic, in

Economic case No. 17 of 2023, where it was revealed 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.

Applicants herein are party of 13 accused in the same Economic case No. 17. Applicant filed this application with certificate of urgency and this court found prudent to hear the parties at the earliest possible time.

Knowing bail is their constitutional rights, Applicants hired legal service of Advocate Leonard Magwayega who appeared and submitted for them. Respondent, the Republic was represented by, Thawabu Yahya Issa, State Attoreny. Mr Magwayega submitted that all applicants are under custody in Bunda and he is praying for bail as per affidavit of each applicant which he prayed to be adopted. He submitted that, these applicants herein are apart of 13 accused in Economic Case no. 17 of 2023 where nine accused applied for and were granted bail so he prayed for application to be granted so far as application has been filed in this Court and is continuation of application Misc Criminal Application No. 29 of 2023.

Mr. Thawabu for respondent did not have much to submit after being aware of Amendment of the law and the value of the subject matter, he declared not to contest the application but he prayed this court to put much consideration on conditions for grant. That marks the end of submission.

The allegations faced by the applicants under section 148 (1) of the Criminal Procedure Act and section 29 (4) of the Economic Crimes Act are bailable. Further, section 29 (4) of the Economic and Organised Crimes Control Act, Cap 200 as amended by section 35 of the Written Laws (Miscellaneous Amendment) Act, No. 1 of 2022, for the value of money involved in the offence which is more than Three Hundred Million, necessitated bail applications to be decided by this court.

Am aware of the Judiciary of Tanzania Bail Guidelines issued by Hon, Chief Justice on 10th September 2020, item 3.2 of the Guidelines, the possibility that accused person may abscond bail, is one of the imperative factors to be considered in granting bail. Apart from guideline above, Article 13 (2) (b) of the Constitution, section 148 (1) of the Criminal Procedure Act, section 29 (4) and 36 (5) (a)-(d) & 36 (6) (a) - (c) of the Economic and Organised Crimes Control Act are paramount in application like this at

hand. Court is at liberty to give conditions which thinks fit for interest of justice and accountability of applicants. It should be noted that if the offence is bailable, then, bail condition set must be reasonable unless for the serious offence, where the condition must be stiff. Failure to fulfil conditions set, applicant will be deprived of his liberty. **See Francis Davis Mchacky & Ten Others Vs. Republic**, Misc Criminal Application No. 14 of 2022, **Salum Abeid Mbaya & Ten Others Vs. Republic**, Consolidated Misc. Economic Application Nos. 68 & 69 of 2019 and **Prof. Costa Ricky Mahalu & Another Vs. Attorney General** Mis Civil Cause No. 35 of 2007.

In the upshot while noting the law regulating bail under section 148 (1), (6) and 7 of the Criminal Procedure Act, Cap 20 [R. E. 2022], and section 29 (4) and 36 (5) (a)-(d) and (6) (a) - (c) of the Economic and Organised Crimes Control Act, and being aware of the principle of sharing the amount of value of money involved in an offence as was in **Francis Davis Mchacky & Ten Others vs. Republic**, Misc. Criminal Economic Application No. 14 of 2022; I am enthused to grant bail to the applicant.

However, in order to be released from custody, the applicant must fulfil the following conditions:


1. Each Applicant shall surrender his passport or any other travelling documents, if any, to the Deputy Registrar of this Registry;
2. Each applicant shall report to the Deputy Registrar of this 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 to prove their attendance;
3. Each applicant shall not travel out of the State of United Republic of Tanzania without prior written leave of the Deputy Registrar of this 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 United Republic 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 appearance in court whenever required;
9. Each applicant shall deposit cash in sum of 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;
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 Registry.

Ordered accordingly.




M. L. KOMBA
JUDGE

Ruling delivered in chambers under the seal of this court in the presence of Mr. Leonard Magwayega (Advocate) and in the presence of the learned State Attorney, Mr. Thawabu Issa for the Republic.


M. L. KOMBA
JUDGE

31 October, 2023