

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM.

MISCELLANEOUS ECONOMIC CAUSE NO. 154 OF 2023

*(C/f Economic Case No. 28 of 2023 in the Resident Magistrates' Court of
Dar es Salaam at Kisutu)*

KENNEDY MICHAEL MWAMBETA.....APPLICANT

Vs

THE REPUBLIC.....RESPONDENT

RULING

Date of last Order:23-11-2023

Date of Ruling:27-11-2023

B.K. PHILLIP, J.

The applicant herein is an accused person in Economic Case No. 28 of 2023 in Resident Magistrate's Court of Dar-es-Salaam at Kisutu, facing the following charges;

- i) Leading organized crime, contrary to paragraph 4(1) of the First Schedule read together with sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act, (" EOCCA").
- ii) Unlawful dealing in Trophies, contrary to sections 80(1) and 84 (1) of the Wildlife Conservation Act No 5 of 2009 read together with paragraph 14(b) of the first schedule to and sections 57 (1) and 60 (2) of the EOCCA.

- iii) Unlawful possession of Government Trophies, contrary to sections 86 (1) and (2) (b) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 (b) of the first schedule to and sections 57 (1) and 60 (2) of the EOCCA.
- iv) Unlawful possession of Government Trophies, contrary to sections 86 (1) and (2) (c) (iii) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 (b) of the First Schedule to and sections 57 (1) and 60 (2) of the EOCCA.
- v) Forgery, contrary to sections 333, 335 (a) and 337 of the penal Code.

The applicant lodged this application under the provisions of sections 29 (4) (d) and 36 (1) of the EOCCA, section 392A(1) and (2) of the Criminal Procedure Act (" CPA") praying for the following orders;

- a) That this Honourable court be pleased to grant bail to the accused person in Economic Crime Case No.28 of 2023 for the second time, pending committal proceedings before the Resident Magistrate's of Dar es Salaam at Kisutu.
- b) That, subject to the accused person being granted bail, the Honourable Court be pleased to impose reasonable bail terms and conditions to the accused person.
- c) Any other Orders or reliefs the Honourable Court may deem fit and just to grant.

The application is supported by an affidavit sworn by the applicant in which he deposed that the offences he is facing are bailable. He has reliable

sureties and is ready to fulfill all bail bonds and conditions that shall be imposed by the court if this application is granted.

During the hearing of this application, the learned State Attorney Rose Makupa appeared for the Respondent whereas the learned Advocates Emmanuel Msengezi and Method Kagoma appeared for the applicant. The respondent did not file any counter affidavit. During the hearing, when called upon to address this court, Ms. Makupa informed this court that the respondent was not contesting the application.

Submitting in support of the application, Mr. Msengezi started his submission by adopting the contents of the affidavit in support of the application. Referring this court to paragraph 5 of the applicant's affidavit, Mr. Msengezi contended that the applicant has reliable sureties and undertakes to appear in court whenever required to do so. Moreover, Mr. Msengezi argued that bail is a right of an accused person. He implored this court to grant this application by citing the case of **Nasibu Mmbagga and two others Vs Republic, Misc. Criminal Application No.187 of 2021, Obadia John @ Gari Moshu Vs Republic, Misc. Criminal Application No.39 of 2022** and **Theresia Theobard Rukanga Vs Republic, Misc. Criminal Application No.84 of 2023** (all unreported), to cement his arguments.

Having dispassionately analyzed the arguments raised by the learned Mr. Msengezi as well as perused the affidavit in support of the application which stands unchallenged, I have noted that the applicant deposed that he is ready to abide by all bail conditions that shall be imposed by this court. It is also, noteworthy that the offences charged against the applicant are bailable.

Thus, the applicant is eligible to bail (see section 36 of EOCCA and section 148 of the CPA).

From the foregoing, I am satisfied that the applicant deserves to be admitted to bail. Regarding the bail conditions, since the amount involved in this case as per the charge sheet is in total Tshs. 3,346,909,639.2, in terms of section 36 (5) of the EOCCA, half of the said amount (Tshs. 1,673,454,819.6) is to be deposited in court or a certificate title of immovable property of equal value and the rest shall be secured by execution of a bond. However, since the case involves 14 accused persons the aforesaid amount shall be divided equally among them. Thus, the applicant is admitted to bail under the following conditions;

- i) The applicant should deposit in court Tshs.119,532,487/= or a certificate of title of immovable property of similar value or more located in Dar es Salaam.
- ii) The applicant must secure two reliable sureties to execute bonds of Tshs.59,766,244/= each. One surety must be an employee of the Government of the United Republic of Tanzania or any reliable Company.
- iii) The applicant should not leave the Jurisdiction of the Resident Magistrates' Court of Dar es Salaam at Kisutu without prior permission from the court.
- iv) The applicant should surrender her passport and any other traveling documents to the Resident Magistrate's Court of Dar es Salaam at Kisutu.

- v) The applicant is compulsorily bound to appear in court at any time when required until the final determination of Economic Case No. 28 of 2023.

Verification of sureties and bond documents shall be executed by the Resident Magistrate's court of Dar es Salaam at Kisutu.



Dated this 27th day of November 2023


B.K. PHILLIP
JUDGE