

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA**

AT SUMBAWANGA SUB-REGISTRY

**CONSOLIDATED MISC. CRIMINAL APPLICATION
No.7885, NO.7886, No.7887 & No.8038 OF 2024**

**(Arising from the Resident Magistrate Court of Katavi in
Economic Case No. 5 of 2023)**

CATHERINE MICHAEL MASHALLA.....1ST APPLICANT
MICHAEL MATHEW KATANGA.....2ND APPLICANT
MASAMI ANDREW MASHAURI.....3RD APPLICANT
MAIRA SAMSON OLUOMBA.....4TH APPLICANT
JUMA MOTELA JOHN OLUOMBA.....5TH APPLICANT

VERSUS

THE REPUBLICTHE RESPONDENT

Last order: March 25, 2024
RULING: March 27, 2024

RULING

NANGELA, J.:

This is a consolidated bail application pending trial. It combined criminal applications namely: —Misc. Criminal Application No.7886, Misc. Criminal Application No. 7887, Misc. Criminal Application No.7885 and Misc. Criminal Application No.8038 (of 2024) filed on the 25th day of March 2024 by the applicants herein. The applications in question were all

brought under Section 29(4)(d) of the Economic and Organized Crime Control Act, Cap. 200 R.E. 2022, by way of chamber summonses supported by affidavits sworn by the applicants.

When the applications were set for hearing, I found it appropriate to have them consolidated given that the same were seeking bail and arose from the same original case file in Economic Crimes Case No.05 of 2023, a case that all applicants are faced with. For the sake of consistency in decision-making and to avoid conflicting decisions regarding the bail conditions that might be granted to the applicants if the applications sail through, this court ordered that all four applications be consolidated to form a Consolidated Criminal Application No. No.7885, NO.7886, No.7887 and No.8038 (of 2024) which were heard together as one.

From that understanding, I also find it apposite to tailor a brief context regarding this consolidated application. The applicants are civil servants employed by the government of the United Republic of Tanzania. Together with 10 other co-accused persons, they were arrested and charged with several

counts totalling 153 under the Economic and Organised Crimes Control Act, Cap. 200 R.E. 2022, read together with the Cybercrimes Act, No. 15 of 2015, and/or the Prevention and Combating of Corruption Act, Cap. 329 R.E. 2022.

It is also worth noting that, some of the counts in that litany of counts facing the accused persons, are based on the Anti-Money Laundering Act, Cap. 423, R.E 2022, for which an option for bail is not available. Those counts, however, are not directly touching on the applicants herein but rather eight among the 15 accused persons and, consequently, this application is not concerned with those counts or those accused persons who are involved in them.

Given the number of counts in which the applicants herein are facing in their charge sheet (which was attached to the chamber summons), it suffices to state that the charges they are facing are charges for which the option for bail is open and they have exercised that right by applying for it. The applicants have done so before this court because, as per the charge sheet, the offence involves an amount equal to Tanzanian Shillings **One Billion Two Hundred Thirty-Two**

Million Four Hundred Eight Thousand Six Hundred Eighty-Nine (TZS-1,232,408,689/-).

This amount has exceeded the pecuniary value for which the Resident Magistrates' Court where the Economic Crimes Case No.5 of 2023 which the applicants are facing remains pending. For that matter, section 29(4) (d) of the Economic and Organised Crimes Control Act, Cap. R.E 2022 vest such powers in this court.

When this consolidated application was called for hearing on March 26, 2024, the applicants enjoyed the services of Mr. Laurence John and Sekela Amulike, Advocates, as well as the briefing of Ms. Angela Deus Remmy, Advocate. On the other hand, Mr. David Mwakibolwa, State Attorney, appeared for the respondent (the Republic). Initially, Mr. Makibolwa had filed a counter affidavit and a notice of preliminary objection. However, he later withdrew the Notice of Preliminary Objection from the court and proceeded with the hearing.

Submitting in support of the applicants' prayers, it was Mr. Lawrence's submission that, this consolidated application is

brought under sections 29(4)(d) and 36(1) of the Economic and Organized Crimes Control Act, Cap. 200 R.E. 2022. He informed this court that, the applicants are seeking to be granted bail pending a hearing and final determination of Economic Crimes Case No.05 of 2023, pending before the Resident Magistrates Court of Katavi at Mpanda.

Mr. Lawrance adopted the supporting affidavits filed by the applicants in support of their applications to form part of his submission and argued that, as the affidavits will show and as per the charge sheets forming part of the applicants' affidavits, the offences the applicants are facing are crimes for which bail is open and grantable by this Court. He submitted that the amount involved is TZS 1,232,408,689/-, which is far beyond that which a Resident Magistrates' Court could exercise jurisdiction thereupon.

Mr. Lawrance argued that the applicants are still presumed innocent and hence eligible for bail given that Article 13(6)(a) of the URT Constitution recognises that bail is a right of an accused person. He relied on the cases of **DPP vs. Daudi Pete** [1993] TLR 22, **Jaffer vs. Republic** [1973]

E.A. 39, and **Tito Lyimo vs. Republic** [1978] LRT No. 55 to support his submission. He, therefore, urged this court to grant the prayers sought by the applicants upon such conditions as may be appropriate, given that the accused persons are facing bailable offences.

Before winding up his submission, Mr. Lawrence submitted that, if this court forms an opinion to grant the application as the applicants had implored it to do, then it should also take into consideration all other entitled applicants who, in total, are seven in number and apply the principle of sharing. To support his position, he placed reliance on the case of **Vitus Yamola and 10 Others vs. Republic**, Consolidated Criminal Application No. 2, 3, and 7 of 2020 (HC) (at Bukoba) (unreported). He submitted that all applicants are public servants who have never been convicted or jumped bail and that since in the respondent's counter affidavit it has not been stated how the respondent will be prejudiced if bail is to be granted to the applicants, then this application should sail through.

In his reply to the submission made by Mr. Lawrance, it was Mr. Mwakibolwa's submission that, after hearing from Mr. Lawrance, he would wish to adopt the counter affidavit the respondent filed in this court and state that, in essence, the respondent is not contesting the application. However, the respondent's concern is that the grant shall be confined to those who are eligible only.

Mr. Mwakibolwa submitted that, while the respondent concedes that bail is a constitutional right, there are decisions of this same court and the Court of Appeal that are to the effect that, where the accused offences do not fall under Section 148(5) of the CPA, they should be granted bail. He contended that, save for the accused No. 1, No. 3, No. 4, No. 6, No. 9, No. 10, and No. 12, who are eligible for bail, the rest are not eligible.

As regards those eligible applicants, it was Mr. Mwakibolwa's plea that this court, while considering granting their application, should also consider the gravity of the offences they are facing, the security of the accused, and their

availability whenever they might be required to appear in court.

He also submitted that being a public servant does not fall under conditions that the court should consider when determining bail conditions for applicants in an application like the one at hand. Mr. Mwakibolwa submitted further that, since the applications are arising from Economic Crimes Case No. 5 of 2023 pending before the RM's Court at Mpanda, the conditions should as well consider that factor. In his brief rejoinder, Mr. Lawrence only reiterated his main submission and prayed that this court should proceed to grant the application since, in essence, the respondent is not contesting it.

I have considered their submissions and looked at the supporting documents (affidavits) in which the applicants state that the lower court before which they are currently arraigned has no jurisdiction to grant bail to them, given that, the offenses they are facing exceed the value of TZS 10,000,000/=. I also note that in their supporting affidavits, the applicants have intimated that they are ready to abide by

any bail conditions that may be set by this court if their application is granted. It is also worth noting that two more of the 15 accused could also be entitled to bail. These are accused No. 9 (**Flavian Mkombozi Muhula**) and accused No. 10 (**Mohamed Amdani Lungia**).

Finally, I do note, as well, that, the applicants herein have lodged this application in the interest of justice. The granting of bail to an accused person awaiting hearing of the charges facing him/her has been a subject of concern in the administration of criminal justice, given that it is an issue that touches on fundamental human rights to liberty.

As noted, hereabove, the applicants brought this application to the attention of this court '**in the interest of justice**'. Essentially, '**in the interest of justice**', is a phraseology that, though not given a legislative meaning, remains a concept whose reading should be guided by the ordinary meaning of the words.

As a matter of principle, however, when that concept is taken as an anchor upon which an application for bail is attached, its meaning and effectiveness would be lost if courts

of law were to fail to carry out their inherent duties of striking a balance in such proceedings. That balance is inherently between the rights that an accused person is entitled to during the pre-trial stages of his/her charges and the nature of the offences or counts the accused person might be faced with.

There is no gainsaying, therefore, that in our jurisdiction, the issue of bail is a constitutional right enshrined in Article 13(6)(b) and Article 15(1), (2) of the United Republic of Tanzania Constitution, 1977 (as amended from time to time). Under those provisions, unless there are compelling reasons, an accused person has a right to be released on bail pending a hearing and determination of his/her case. The Constitution has, therefore, guaranteed such a right to freedom.

With that understanding, therefore, what this court is called upon to do is to strike a balance between that right and the nature of the offences which the accused persons are facing, given that some offences, such as those involving money laundering, have been curtailed from bail considerations because of their gravity.

In this application, as I noted here above, there are two more accused persons (Accused Nos. 9 and 10) who are eligible to bail but have not applied for it. The question to respond to is whether they need to be taken aboard as well when this application is granted. Put differently, should they file another application before this court? From the submissions, it seems that both counsels for the parties are in unanimity that this application before me should also take them on board.

I think that is a correct position. Fundamentally, in bail proceedings, unlike in trial proceedings, it is important for the courts to play a more pro-active role. In other words, the court in such applications is not confined to the comfort and safety of its armchair while the parties contest the arena. The issue of bail being a sensitive issue touching on the presumption of innocence and bail being a right in its own, is dealt with somewhat differently. In that regard, where there are eligible co-accused persons who did not apply for bail along with other applicants who are before the court, the court should proactively go beyond the parties' submissions and, as well,

consider the fate of those eligible co-accused who have not approached it along with the rest who have done so.

However, that is not a hard and fast rule since, as it was considered by the Allahabad High Court in the Indian case of **Salim vs. State of UP** (2003) ALL LJ, 625:

“There is no absolute hidebound rule that bail must necessarily be granted to the co-accused where another co-accused has been granted bail.”

But the necessity to consider even other remaining co-accused persons who did not apply for bail while they are entitled to do so lies in the need to avoid the multiplicity of suits and the danger of conflicting decisions. When this court consolidated these applications, it was guided by the doctrine of parity. The guiding rationale was that, where bail applications originate from the same original file, a single judge should hear and rule on all such similar applications and, in accordance with the principle of parity, which stipulates that similar cases should be handled similarly and different cases differently, the decision made by the judge will impact

even those who did not apply for bail, if they were entitled to it.

That approach is also rooted within the law itself. Article 13 (1) of the Constitution and Section 36 (1) of the Economic and Organised Crimes Act, Cap. 200 R.E. 2022, are relevant to that point. Whereas the cited constitutional provision advocates for equality before the law, Section 36(1) of the Economic and Organised Crimes Control Act allows the court, before an accused person is convicted, to, *suo moto* or, upon application, admit such person to bail.

That implies that, even where there is no application for bail, a court may still proceed to admit an accused person to bail. See the case of **Nasib Mmbagga and 2 Others vs. The Republic**, Misc. Crim, Appl. No. 187 of 2021 (HC) (DSM) (unreported), where it was also held that doing so will avoid multiplicity of actions and conflicting decisions.

In essence, one should take note of the wide discretion given to the court in bail inquiries. In such an inquiry, the court enjoys wide inquisitorial powers, including those that even entitle it to call for additional material information from

any of the parties if it considers that what has been laid before it is insufficient. From the foregoing, it is clear, therefore, that the 9th and 10th accused persons will as well be affected if this court grants bail to the applicants as prayed.

Having considered the fate of the accused Nos. 9 and 10, the issue is now whether I should grant this consolidated application. Based on the considerations already made, I will not hesitate to grant the application, subject to certain conditions. Under the Bail Guidelines adopted by our Judiciary, a list of inexhaustive factors, including the gravity of the offenses, is listed to guide courts when considering granting bail to accused persons.

Other factors include the accused persons' security, victim protection, possible abscondment, possible furtherance of crimes, public order preservation, nature of the accused persons, vulnerability, and other special circumstances such as illness, as well as possible interference with investigation, to name but a few. Considering such parameters and the facts as adduced in the applicants' affidavits and since there have been no adverse concerns raised about the applicants' character or

antecedents, I find that this court should be guided by the enormity of the offences, the sentence they might attract and any possibility to abscond when it sets out the requisite bail conditions.

As to the enormity and severity of the offences the applicants are facing, there is no doubt that the applicants are facing serious offences that may attract severe sentences, some of which include even a maximum of up to 30 years imprisonment if proved. This is a factor to take into account when setting bail conditions without, however, forgetting that bail is a right and should not be curtailed unnecessarily. According to sections 36(5) and (6) of Cap. 22 R.E. 2022, the law provides that:

“(5) Where the Court decides to admit an accused person to bail, it shall impose the following conditions on the bail, namely:

(a) where the offence with which the person is charged involves actual money or property whose value exceeds ten million shillings unless

that person deposits cash or other property equivalent to half the amount or value of actual money or property involved and the rest is secured by execution of a bond: Provided that, where the property to be deposited is immovable, it shall be sufficient to deposit the title deed, or if the title deed is not available, such other evidence as is satisfactory to the court in proof of existence of the property;;

(b) appearance by the accused before the Court on a specified date at a specified time and place;

(c) surrender by the accused to the police of his passport or any other travel document; and

(d) restriction of the movement of the accused to the area of the town, village or other area of his residence.

(6) The Court may, in addition to the mandatory conditions prescribed in subsection (4), impose any one or

more of the following conditions,
namely-:

(a) requiring the accused to report
at specified intervals to a police
station or other authority in his area
of residence;

(b) requiring the accused to abstain
from visiting a particular locality or
premises, or association with certain
specified persons;

(c) any other condition which the
Court may deem fit to impose in
addition to the preceding conditions,
which appear to the Court to be
likely to result in the appearance of
the accused for the trial or resumed
trial at the time and place required
or as may be necessary in the
interest of justice or for the
prevention of crime."

Section 36(5) of Cap. 200 R.E. 2022 is of mandatory
nature if the court decides to grant bail. It is just the opposite
of Section 36 (4) (a) to (f), which prescribes a mandatory

denial of bail 'if conditions set out therein exist'. The opening words in Section 36 (4) are clear: **"the court shall not admit any person to bail"** if such conditions listed therein exist. That section is further amplified by what section 36 (6) of the Act states – i.e., **"in addition to the mandatory conditions prescribed in Subsection (4) ..."**.

This court, thus, is bound to follow what the prescribed conditions are as it proceeds to grant this application. I note that, in his submission, Mr. Lawrance urged this court to, apart from considering the prescribed conditions provided for under the law, consider the principle of sharing as applied in the case of **Vitus Yamola and 10 Others vs. Republic**, (supra). I am, indeed, aware of that principle and I find it fit for use even in this application as well.

In the upshot of all that, since the applicants have never been previously convicted and sentenced to imprisonment, or ever jumped bail or committed an economic offence while on bail, and, given that there is no concerns as to whether their safety is endangered and they are willing to comply with conditions which include deposit for cash

equivalent to half the value of the property in question, I find no reasons as to why I should not grant this application and admit them to bail pending Inquiry and Committal proceedings of their case at the Resident Magistrates' Court.

For those reasons, I will set the following conditions:

1. That, based on the principle of sharing, and considering that the accused persons who are eligible to bail are seven, each accused (applicant) (including accused number 9 and 10) shall deposit cash in court as security for bail in the amount of **TZS 176,058,384.1429** **or Certificate(s) of Title of immovable properties** equivalent to **TZS 176,058,384.1429** ; and in case any applicant decides to deposit a Title Deed of an immovable property, then he/she has to accompany it with a **duly signed and certified Valuation Report from the Chief Government Valuer** confirming the value of the

properties whose Title Deeds have been so deposited.

2. Each applicant shall **provide two reliable sureties who are citizens and residents of Tanzania of the age of majority**, one being an employee of the government, and those shall each execute **a bond of equal to TZS 88,029,192.0715.**
3. Each surety standing for any of the applicants shall **submit to the court before whom the accused person's case is currently pending, a duly signed and stamped letters from the Village or Mtaa Executive Office and Chairman of the respective Village/Mtaa**, introducing them and their reliability as sureties. Such letters shall, in addition be accompanied by **duly certified copies of their NIDA Identification Cards.**

4. Each of the applicant's sureties shall undertake to **make sure that the person he/she stands for (i.e., the applicant/accused herein) must enter appearance** whenever the person's case is scheduled for mention, hearing, or for any other order or direction of the court.
5. That, the applicants' movements shall be confined to Katavi Region and shall not go beyond that region without a **duly written, signed and stamped permission/consent** of the Resident Magistrate in Charge of Katavi Resident Magistrates' Court at Mpanda.
6. The applicants shall be required to report to the Katavi Central Police Station on each **first Monday of each Months.**
7. Each applicant shall mandatorily appear before the Court whenever

required to do so, including during the hearing and final determination of Economic Crimes Case No. 5 of 2023, for which they stand charged.

8. Each of the applicants shall **surrender his/her Passports or any other travelling document, if any**, to the Regional Crimes Officer in charge of Katavi Region.

9. That, should the applicants (including accused No. 9 and 10) breach any of the imposed bail conditions herein, his/her bail shall be revoked forthwith, their bonds/deposits forfeited, and they shall be put into custody until the final determination of his/her case.

10. The above bail conditions shall be supervised, and sureties certified by the Resident Magistrate In-charge of Katavi Resident Magistrates' Court, at Mpanda and, **upon full compliance with the bail conditions to the**

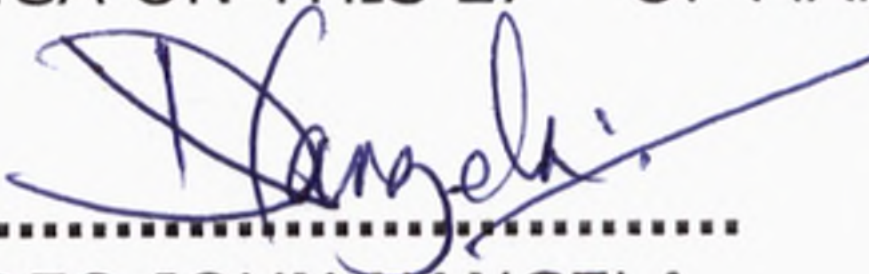
satisfaction of the RM-In-charge, Katavi Resident Magistrates' Court, each of the applicant/accused entitled to bail shall be released on bail.

With such conditions having been set, this application is hereby granted as prayed and subject to such conditions.

Order accordingly.

DATED AT SUMBAWANGA ON THIS 27TH OF MARCH 2024




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DEO JOHN NANGELA
JUDGE