

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA SUB- REGISTRY

AT BUKOBA

MISCELLANEOUS ECONOMIC APPLICATION NO. 11456 OF 2024

(Arising from Economic Crime Case No. 10041 OF 2024 in Resident Magistrate's Court of Bukoba at Bukoba)

AVITUS WINCHLAUS@DANY..... APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

03/05/2024 & 06/05/2024
E.L. NGIGWANA, J.

The applicant, under certificate of urgency, has moved this Court by way of chamber summons made under section 29 (4) (d) of the Economic and Organized Crimes Control Act, [Cap. 200 R: E 2022], seeking for this Court to be pleased to grant bail to the applicant pending trial in respect of Economic Crimes Case No.10041 of 2024 filed before the Resident Magistrate's Court of Bukoba. The application is supported by the affidavit deposed by the applicant.

According to the charge sheet appended to the affidavit in support of the application, the above named applicant and other twelve (12) persons (who are not subject to this application) were arraigned before the Resident Magistrates' Court of Bukoba at Bukoba for three counts namely;

Leading Organized Crime Contrary to paragraph 4 (1) (a) of the First Schedule to, and sections 57 (1) and 60 (2) of the Organized Crime Control Act, [Cap. 200 R.E 2022] (EOCCA), receiving stolen properties contrary to section 311 of the Penal Code, [Cap 16 R.E 2022], and causing loss to the specified authority contrary to paragraph 10 (1) of the First Schedule to, and sections 57(1) and 60 (2) of the Organized Crime Control Act, [Cap. 200 R.E 2022].

The value of the subject matter involved in the charges is **TZS 377,000,000/=** therefore, the Resident Magistrate's court has no mandate to grant bail because the amount is beyond the powers of the Court of Resident Magistrate court to grant bail, and hence this application.

When the application was called on for hearing this 3rd day of May, 2024, the applicant was advocated by Mr. Ibrahim Mswadick while the Respondent/Republic was represented by Ms. Gloria Rugeye, learned State Attorney. The Respondent neither filed the counter affidavit nor contested the application.

In his brief oral submission, Mr. Mswadick reiterated the reasons stated in the affidavit supporting the application and argued that, considering the value of the subject matter involved in the case facing the applicant,

the Resident Magistrates' court has no jurisdiction to grant bail. He added that the applicant is ready to abide to the bail conditions to be set by the court. He ended up his submission beseeching the court to grant this application due to the fact that the offence is bailable but also the applicant is seriously sick and hence needs serious medical attention.

On her side, Ms. Rugeye did not oppose the application but implored the Court when granting the bail to consider the provisions of section 36 (5) of the EOCCA.

Having heard both sides, the issue for determination is whether this application is meritorious. It is a clear position of the law in our jurisdiction that bail is both a statutory and constitutional right for an accused unless there are express provisions of law or compelling reasons to deny the same. In the case of **Patel v. R** [1978] H.C.D No.391, the court had this to say regarding bail;

"Man, whilst awaiting trial is of as right entitled to bail, as there is presumption of innocence until the contrary is proved. I would say that the court should be guided by four main principles on the granting of bail pending trial. The first and foremost is that the court should ask itself whether the accused will be available at the trial, secondly whether the accused is likely to commit further offence if he is allowed out on bail in

which case his character is certainly not irrelevant. Thirdly whether the accused is likely to interfere with the investigation by influencing witnesses or otherwise, and fourthly the gravity of the accusation and the severity of the punishment if conviction results."

See also Article 13 (6) (b) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time. The rationale of granting bail to an accused person is to let him/her enjoy his/her freedom so long as he/she shall appear in court for his/her trial. See the case of **Hassan Othman Hassn @Hasanoo versus Republic**, Criminal Appeal No. 193 of 2014 CAT – DSM (unreported).

In the instant application, since the applicant has been charged with a bailable offence, and that the application has not been contested by the Respondent/Republic, and since no compelling meritorious reasons for the court to decline the application, this application for bail pending trial (if any) of the Economic Crimes case No.10041 of 2024, is meritorious.

In Economic Crimes Case No. 10041, accused persons are 13 in number, thus the principle of "**sharing**" must come into play. See the case of **Sylvester Hillu Dawi and another versus Director of Public Prosecutions (DPP)**, Criminal Appeal No. 250 of 2006 CAT (unreported.

The principle guides that, where two or more persons are charged with an offence of the nature named herein above, then the amount to be deposited shall be shared among the accused persons for purposes of bail.

The law requires the applicant to deposit half of the amount value of the subject matter. It follows that, by simple arithmetic, half of the amount involved in the charge sheet, that is to say **TZS. 377,000,000/=** is **TZS. 188,500,000/=**.

When such amount is divided to all 13 accused persons according to the above highlighted principle, each of them shall be required to deposit **TZS. 14,500,000/=**

In that premise, I grant bail to the applicant on the following conditions;

- (1) That, the applicant shall deposit cash **TZS. 14,500,000/=** or deposit to the custody of the court a Title deed or evidence satisfactorily to prove existence of an immovable property whose value is not less than **TZS. 14,500,000/=**. In case the applicant decides to deposit immovable property, the Title deed or evidence must be accompanied by valuation Report from the Government Valuer

- (2) The applicant must have two reliable sureties, each shall have national identity card and introduction letters from his/her respective local authority.
- (3) Each surety shall execute bail bond in the sum of **TZS. 7,250,000/=.**
- (4) Applicant shall surrender his passport or any travelling document (if any) to the Resident Magistrate's Court of Bukoba at Bukoba
- (5) The Applicant shall not travel outside Kagera Region without approval or permission of the Resident Magistrate In-charge of the Resident Magistrates' Court of Bukoba at Bukoba.
- (6) Applicant shall appear before the Resident Magistrates' Court of Bukoba at Bukoba on every specified date and time.
- (7) Verification of sureties and bond documents to be executed by Resident Magistrate in charge of the Resident Magistrate Court of Bukoba at Bukoba.

It is so ordered.



E.L. NGIGWANA

JUDGE

06/05/2024

Ruling delivered this 6th day of May, 2024 in the presence of the applicant and Mr. Ibrahim Mswadick learned Advocate, Ms. Gloria Rugeye, learned State Attorney for the Respondent Republic, and Ms. Queen Koba, B/C.


E.L. NGIGWANA

JUDGE

06/05/2024

