

IN THE HIGH COURT OF TANZANIA
CORRUPTION AND ECONOMIC CRIME DIVISION
DAR ES SALAAM REGISTRY

MISC ECONOMIC CAUSE NO. 5 OF 2016

(Arising from Economic Crimes Case No. 20 of 2016, Resident Magistrate's Court of Dar es Salaam at Kisutu)

JOVINA DAMIAN JAMES

Versus

REPUBLIC

Date of last order 30/12/2016
Date of Ruling 30/12/2016

RULING

The applicant filed an application via a chamber summons supported by an affidavit of Jovina Damian James the applicant. The application is pursuant to section 36(1) and 29(4)(d) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 and the relief sought was for this Court be pleased to grant bail to the applicant with respect to Economic Case No. 20 of 2016 pending at Resident Magistrate Court of Dar es Salaam at Kisutu and any other relief the Court may deem fit and just to grant.

On the date fixed for hearing, the Respondents who were invited to file a counter affidavit, represented by Awamu Mbagwa, Learned Senior State Attorney informed

the Court that they waive that right because they were not disputing the facts of the case as narrated in the applicants affidavit filed to support the application. Both parties consented to argue the application by way of oral submission. The applicant represented by Mr. Emmanuel Kessy Learned Advocate.

Before venturing into consideration of the submissions by the parties, we find it relevant to present briefly the background scenario to the matter. Jovina Damian James, the applicant is the 1st accused amongst four accused persons in Economic Crime Case No. 5 of 2016. The applicant faces five Counts that is; Conspiracy to Commit an Offence contrary to section 384 of the Penal Code, Cap 16 RE 2002; Forgery Contrary to Section 333, 335(d) and 337 of the Penal Code Cap 16 RE 2002; Uttering a False Document contrary to section 342 of the Penal Code; Obtaining Registration by False Pretence contrary to section 309 of the Penal Code Cap 16 RE 2002 and the 5th Count where she is charged with the other 3 accused persons is Occasioning Loss to a Specified Authority Contrary to Paragraph 10(1) of the First Schedule to and Section 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap 200 RE 2002.

In the fifth Count it is alleged that the applicant, with Gu Kai, Leonard John Assey and Jason Wei between the 21st day of October 2014 and 30th day of March 2016 within Ilala District and Dar es Salaam Region by willful acts caused the Tanzania Revenue Authority (TRA) to suffer a pecuniary loss of Tshs. 1, 776, 693, 465/-.

The applicants affidavit, which the Court was called upon by the applicants counsel to adopt it so that it becomes part of their submissions, stated that she had tried to apply for bail in the Court of Resident Magistrate at Kisumu but was informed that the Court with Jurisdiction to determine such an application was the High Court hence the current application and thus prayed for this Court to grant bail pending trial. The learned counsel for the applicant averred that the offences for which the applicant is charged are bailable including the economic offence which necessitated

the charge being designed as a Economic crime case and that the applicant is charged with three other persons. That the applicant has permanent place of domicile as averred in the affidavit and that she has reliable sureties available if called to supply and that the applicant is ready to comply with any conditions ordered by the Court upon grant of this application.

The Senior State Attorney who represented the Respondent Republic, submitted that they do not have any objection to grant of bail to the applicants since the offence for which the applicant is charged with is a bailable offence. Mr. Awamu Mbagwa, Senior State Attorney further contended that in view of the fact that one of the offences charged against the applicant is an economic offence and has the value of the property above ten million shillings therefore the Court should be guided by the law when determining the conditions if the Courts proceed to grant bail to the applicant.

Having heard the submission of both parties to this application, this Court first considers the issue of Jurisdiction. Therefore bearing in mind the fact that count No. 5 is one of Occasioning loss to a specified Authority (an economic offence) with a value of Tshs. 1, 776,693,465/- we do not need to spend more time on this issue because there is no doubt of the Jurisdiction of this Court to entertain the issue.

When considering this application it is important to remind ourselves that bail is a mechanism designed to ensure that the applicant who is subject to the strictures of the law stays out of confinement while the process of inquiry into her liability in the criminal process is being investigated, or if he has been charged in a court of law, her personal freedom is guaranteed before the end of the trial through her furnishing security as part of the undertaking to turn up whenever called up. The institution of bail, therefore, falls on the positive side of the principle of presumption of innocence which we all cherish (see *Criminal Appeal No. 168 of 2012, The DPP vs Bashir Waziri, Mugesu Antony* CAT at Mwanza)

As stated earlier, bail is a right, and as it has been submitted by both parties the offences the applicant is charged with are bailable. With that in mind, and there being no objection against granting of bail to the applicant this Court therefore proceeds to grant the application and admit the applicant **JOVINA DAMIAN JAMES** as prayed and pursuant to section 36(5) and 36(6) of the Economic and Organized Crime Control Act, Cap 200 R.E 2002 on the conditions set hereunder:

1. The Court is aware that the applicant is one among 4 accused in the economic offence for which she is charged. By virtue to the above provision where half the amount of the value of the property in the charge is supposed to be deposited or property equal to the value of the said amount, and in the interest of the principle of sharing enunciated in various case the applicant is to deposit an amount equal to Tshs. **222,086,683.12** (1,776,693,465/- x 1/2 divided by 4) the value of the property in the charge) or immovable property of the equivalent amount.
2. The applicant will be required to provide two reliable sureties who will be required to execute a bond of Tshs. 20,000,000/- each. One of the two sureties for must be employed in the service of the Government of the United Republic of Tanzania or a Public Institution.
3. The applicant will not leave the jurisdiction of this court (The High Court), without permission of the Resident Magistrate Court Kisutu.
4. The applicant is to surrender her passport and all other travelling documents to the Incharge Kisutu RMs Court.

5. The Applicant will be required to report to office of the Regional Crimes Officer-
once in every two weeks that is every other Monday or according to a schedule
designed by the Regional Crimes Officer.

6. The applicant to appear in trial Court on date set by the same court without
failure.

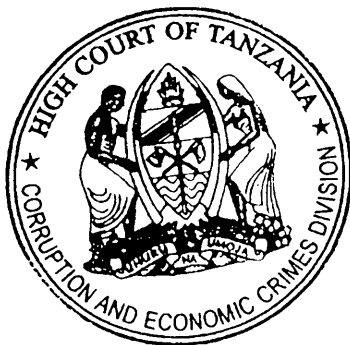
7. Verification of the sureties and bond documents shall be executed by the Incharge
Kisutu RM's Court.

It is so ordered



Winfrida B. Korosso
Judge
30th December 2015

Delivered in open Court in Chambers this day in the presence of Mr. Vitalis Timon
Principal State Attorney and Mchungahela State Attorney, Mr. Emmanuel Kessy for
the Applicant and the Applicant.



Winfrida B. Korosso
Judge
30th December 2015

