

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

MISC. ECONOMIC CAUSE NO. 08 OF 2016

(Originating from Economic Crime Case No. 56 of 2016 at Resident Magistrate Court of
Dar es Salaam at Kisutu)

1. ROGERS DONALD MAHALA
2. BADWIN WOLFRAM KUNDE @TITO

Versus

REPUBLIC

RULING

Before this Court is an application for bail filed via a chambers summons supported by affidavits of Rogers Donald Mahala and Badwin Wolfram Kunde @Tito the applicants, filed pursuant to section 29(4)(d) of the Economic and Organized Crime Control Act, Cap 200 RE 2002.

The background to this application is that the applicants are charged with two counts in a case pending at the Resident Magistrate Court of Dar es Salaam at Kisutu, charged with a third person one Fred Raphael Ilomo. The offences charged are Interfering with Property for Purpose of Providing Necessary Service contrary to Paragraph 20(1), (2)(b), and (3)(a) of the First Schedule to the and Sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap 2002 RE

2002; the second count being Occasioning Loss to a Specified Authority contrary to Paragraph 10(1) of the First Schedule and Sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap 2002 RE 2002. The value of the amount in the charge is 17,826,000.00. The applicants were represented by Mr. Castor Rweikiza, Learned Advocate and and the Respondent Republic was represented by Mr. Vitalis Timon Principal State Attorney. The appeal was argued by way of oral submissions.

The applicants counsel in his submissions in support of the application requested the Court to adopt the contents of the affidavits deposed by the applicants supporting the application so as to be part of their submissions, and contended that the Court has jurisdiction to entertain the matter a view also supported by the learned Principal State Attorney in his submission by virtue of Section 29(4)(d) of the Economic and Organized Control Act, Cap 200 RE 2002. The case of ***Edward Kambuga and Another vs R (1990) TLR 84*** was cited to support this stance. Upon consideration of the submissions of both parties and having considered the provision of Section 29(4)(d) of the Economic and Organized Control Act, Cap 200 RE 2002 finds no reason to differ with the assertion of both counsels on the fact that this Court has jurisdiction to determine the application. The said section reads:

29(4) After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purposes of this section the power to hear bail applications and grant bail–

(d) in all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court.

This Court has no reason to deviate from the finding in the holdings in the cited case of Edward Kambuga (*supra*) and we therefore hold that this Court is vested with jurisdiction to determine the application upon reasons stated above. The case before the RMs Court at Kisumu has yet to be consented by the Director of Public Prosecutions and the amount of the value in the charge facing the applicants (accused persons) exceeds ten million shillings.

The applicants counsel submitted that this Court should admit the applicant to bail because the offences for which he faces charges are bailable, that the applicants are first offenders and have no record of jumping bail, and that the applicant will be available to appear in Court during hearing or any other matter related to the offence charged and they have reliable sureties if the Court grants bail. The applicants averred further that they will be ready to comply with any bail terms and conditions provided by the Court.

The Learned Principal State Attorney did not object to the bail application since the offences which the applicant is charged he contended are bailable and thus conceding to the applicants counsel submissions. Mr. Vitalis Timon, Principal State Attorney submitted further that if the Court is inclined to admit the applicants (accused persons) to bail, when considering the Conditions and terms of bail to bear in mind the mandatory terms and conditions as provided under section 36(5) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 as amended by Act No. 3 of 2016, whereby the applicant is required to deposit half of the amount involved in the charge facing the applicant/accused or property equivalent to half of the amount involve in the charge.

It should be understood that the offences the applicant is charged with are bailable offences as averred to by both counsels, there being no legal provision prohibiting the granting of bail pending trial. That being the case it should also be understood that, in such cases, the Court in consideration of such applications is expected to

exercise its discretion judiciously taking into consideration all important factors relating to granting of bail. The discretionary powers involved in the process of granting or refusing bail is a process in which the court in a free, wise and independent mind considers the relevant law, principles, rules and all the circumstances surrounding the case at hand to reach at the right decision that guarantees a proper and just end of the course of justice.

The question before this Court is therefore whether in the present application there is any evidence to believe that if the application is granted public interests will be jeopardized and whether there are any solid reasons for denying the applicant his constitutional right to liberty? The Respondent Republic has not objected to the application. It suffices that as alluded to in various cases, a decision to grant or refuse bail depends on many factors. They include the gravity of the offence charged, and also a provision of law can prohibit grant of bail. The Court also finds that, since bail is open against the offence for which the applicants are charged with and there being no objection raised there are thus no any plausible reasons to deny bail to the applicants. In the premise, it is hereby held that Bail pending the determination of committal proceedings is granted to the applicants as prayed.

We therefore proceed to the next issue for consideration after granting of bail and that is the conditions or terms of bail. The Court has to be guided by the Law as submitted by the learned Principal State Attorney for the Respondent Republic. The bail conditions are to comply with section 36(5) of the Economic and Organized Crime Control Act, where the law provides for a mandatory provision for an applicant to deposit cash or other property equivalent to half the amount of value of actual money or property involved.

1. In the present case the amount in the charge in Economic Crime Case No. 56 of 2016 is 17, 826,000/-. Half the amount of is 8,913,000/-. Therefore there being

three accused persons, each applicant should deposit cash or properties worth Tshs. 2,971,000/-

2. Each applicant to produce two(2) reliable sureties who are to execute a bond of Tshs. 5,000,000/- each and one of the sureties to be an employee of the Government or its institutions.

3. Each applicant to surrender his passport and other travelling documents at the Kisutu RMs Court and to report to the RCO Dar es Salaam as directed by the RCO.

4. Each applicant to appear before the RMs Court at Kisutu on a specified time and date as scheduled by the court where his matter is proceeding.

5. Each applicant is restricted from moving out of the jurisdiction of this Court without permission of the Resident Magistrate Incharge Dar es Salaam at Kisutu.

5. Verification of the sureties and bond documents shall be executed by the Resident Magistrate Incharge Dar es Salaam at Kisutu. Ordered





Winfrida B. Korosso

Judge

10th January 2017

Ruling delivered in chambers this day 19th December 2016 in the presence of Mr. Castor Rweikiza learned counsel for the applicant and Mr. Timon Vitalis, Learned Principal State Attorney for the Respondent Republic and both of the applicants.




Winfrida B. Korosso

Judge

19th December 2016