

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE CORRUPTION AND ECONOMIC CRIMES DIVISION
(DAR ES SALAAM REGISTRY)
AT DAR ES SALAAM

MISC. ECONOMIC CAUSE NO. 28 OF 2017

EDWIN GUSONGOIRYE 1ST APPLICANT

STEVEN SIMON 2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

Date of last order - 15/9/2017

Date of Ruling - 18/9/2017

R U L I N G

Korosso, J.:

This Ruling reveals determination of this Court on an application filed by the applicants; Edwin Gusongoirye and Steven Simon against the Republic via a chamber summons under a certificate of urgency supported by an affidavit sworn by Mathew Fuko, an advocate of the High Court who avers to be duly assigned to represent both the applicants. The application is filed pursuant to section 29(4)(d) and section 36(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 (hereinafter referred to as

EOCCA or Cap 200) and Section 148(1) and (3) of the Criminal Procedure Act, Cap 20 RE 2002 (to be referred henceforth as CPA).

At the hearing of the application the applicants were represented by Mr. Gwamaka Mwaikugile learned Advocate and the Respondent Republic were represented by Ms. Elizabeth Mkunde, Learned State Attorney. The application sought grant of bail to the applicants pending trial and determination of charges in Economic Crime Case No. 34 of 2017 pending at Resident Magistrate Court of Dar es Salaam at Kisutu and for any other order this Court may deem proper to grant.

It is on record that upon service of the application, the Respondent Republic duly filed a reply to the affidavit, which in effect did not counter most of the averments in the affidavit supporting the application only restating matters raised in the application and emphasizing that the offence for which the applicants are charged with are serious and carry severe punishment. The affidavit supporting the application and the oral submissions by the learned counsel for the applicant's main argument was that this Court has jurisdiction to entertain the application having regard to the charges facing the applicants. That bail is a Constitutional right and the offences which the applicants are charged with are bailable. The applicants counsel contended further that if granted bail they will fulfill conditions given by the Court and enter appearance in Court when required with no chance of violating any bail conditions

meted or jumping bail. The applicants also prayed for flexible and favourable conditions which will be easily met by the applicants.

The Learned State Attorney who represented the Republic submitted that the Respondent Republic did not object to bail, but at the same time reminded the Court the fact that the 1st applicant is a foreigner and therefore the Court should put due consideration on this, if it were to grant bail so that it ensures conditions given will ensure the availability of the applicants to hear their trial. The Respondent Republic other prayer was for the Court to be guided by the provisions of section 36(5) of the EOCCA when determining conditions if it will grant bail and also address the severity of the offence the applicants face.

Having heard submissions and considered the filed documents by the parties in support of their positions, that is the application and affidavit and the counter affidavit, it is important to first consider whether the application is competent and the Court has jurisdiction to hear this application. From the records filed in this Court, the 1st and 2nd applicants are charged with 6 counts that is, Fraudulent use of Network facilities contrary to section 122(b) of the Electronic and Postal Communications Act, No. 3 of 2010 and Regulations 7(1) (2)(a) and (b) of the Electronic and Postal Communications (Communication Traffic Monitoring System) Regulations 2013; Operating Network Facility Without a Licence, contrary to section 116(1) of Electronic and Postal Communication Act, No. 3 of 2010; Importation of Electronic Communications

Equipments without a licence contrary to section 23(1)(a) and 152(1) of Electronic and Postal Communication Act, No. 3 of 2010; Use of Unapproved Electronic Equipments Connected to Electronic Communications Network Licence contrary to section 83(1) and section 152(1) of Electronic and Postal Communication Act, No. 3 of 2010; and Occasioning Loss to a Specified Authority contrary to paragraph 10(1) and (4) of the First Schedule to Economic and Organized Crime Control Act, Cap 200 RE 2002 where the applicants are alleged to have caused to the Tanzania Communications Regulatory Authority a pecuniary loss of Tshs. 210,210,000/-.

The applicants are charged with an economic offence on allegations of causing loss of more than Tshs. 10,000,000/-. Therefore without doubt the RMs Court were the case is presently have no jurisdiction to consider bail for the applicants and being an economic offence, the Court with jurisdiction is this Court. This is cemented by virtue of section 29(4)(d) and 36(1) of EOCCA and being the case were no committal proceeding have commenced by virtue of in the case of **DPP vs Li Ling Ling**, Criminal Appeal No. 508 of 2015, Court of Appeal (unreported) that establishes the fact that this Court has jurisdiction to entertain this matter taking the stage where the matter is at is a matter pending hearing. With regard to the competence of the application, we are satisfied that the provisions cited to move the Court to hear the application are relevant and therefore leaving no doubt that the matter is competent.

This Court has also considered the issue that the 1st applicant Edwin Gusongoirye is not a national, being Ugandan by virtue of the attached charge sheet. The Respondent Republic raised no objection to bail but prayed the Court consider this fact when considering conditions for bail if it grants bail to the applicants. The second applicant is Tanzanian. The issue that the first accused person is a foreigner, as advanced by the Respondent Republic in their submissions, the applicants counsel in reply asserted that the provisions cited to move the Court to grant bail do not discriminate where the applicant is a foreigner and therefore the applicants nationality should not be a matter for concern for the Court when determining bail, that bail remains the right of the applicant/accused person.

We found the issue that the 1st applicant is not a national an important issue requiring due consideration on our part especially relying on the fact that grant of bail is dependent on the applicants entering appearance to proceed for their trial or hearing. In the case of ***Edward Kambuga vs Republic (1990) TLR 84*** discussing this issue it was stated that "*while we agree that foreigners should not be treated differently in our courts merely because they are foreigners , we think the High Court was entitled to take into account past experience when deciding finally whether or not to grant bail*". This shows the importance of the Court to use its discretion to adjudge this and therefore warn itself while not treating the foreigner differently but consider past experience on availability of the applicant/accused to determine whether or not to grant bail.

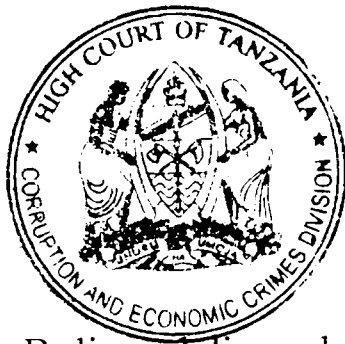
The other case is that of ***HSu Chin Tai and Others vs. Republic***, where the Court denied bail taking into consideration the seriousness of the offence and the fact that the applicants were foreigners and without fixed abode. This being the position this Court proceeded to consider previous experience and also whether or not the 1st applicant has averred anything related to having a fixed abode. With regard to previous experience, we have been informed by the applicants and the respondents that what they are charged presently are the first charges against them and that there is no record that the applicants had previously jumped bail. On the second issue of a fixed abode unfortunately nothing have been advanced by the applicants in evidence except to oral submissions by their counsel relating to this but nothing in the affidavit supporting the application or any other document.

But despite this, the Court has considered as amplified by counsels for the applicants and the respondents, bail is a right of an accused person. Case law informs us that the object of bail is to secure the appearance of the accused person at his trial. Building on the Court finding and satisfaction that that this Court has jurisdiction and having regard to the fact that all the offences facing the accused person are bailable offences. Also considering the fact that the Respondent Republic have not objected to the bail application and in the interest of justice, we thus hold that the application is granted and the applicants are admitted to bail. In the premise, pursuant to Section 36(5) and 36(6) of the Economic and Organized Crime Control Act, Cap 200 R.E 2002, and also to ensure the

availability of the applicants during set hearing dates, the grant of bail to applicants is subject to the conditions set hereunder:

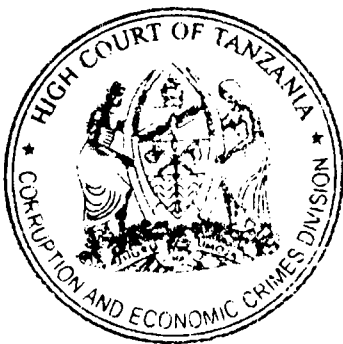
1. There being two accused person in the charges facing them in Economic Crimes Case No. 34 of 2017, Resident Magistrate's Court of Dar es Salaam Region at Kisutu, guided by the principle of sharing, each of the applicants, that is, **EDWIN GUSONGOIRYE and STEVEN SIMON** is to deposit Tshs. 52,552,500/- or immovable property of equivalent amount. (210,210,000/- x 1/2 divided by 2).
2. Each applicant is to provide two reliable sureties who are to execute a bond of Tshs. 20,000,000/- each. One of the two sureties must be employed in the service of the Government of the United Republic of Tanzania or a Public Institution.
3. The first applicant **EDWIN GUSONGOIRYE** to provide evidence of fixed abode in Dar es Salaam to the satisfaction of the Resident Magistrate of Resident Magistrate Court of Dar es Salaam at Kisutu.
4. The applicants will not leave the jurisdiction of this court (the High Court), without permission of the Court of Resident Magistrate of Resident Magistrate Court of Dar es Salaam, at Kisutu.

5. Each applicant is to surrender a passport and other travelling documents to the Resident Magistrate, of Resident Magistrate Court of Dar es Salaam, at Kisutu.
6. The applicants to Report to the RCO Dar es Salaam at a schedule to be provided by the RCO Dar es Salaam.
7. Verification of the sureties and bond documents shall be executed by a Resident Magistrate at the Resident Magistrate Court of Dar es Salaam, at Kisutu.



Winfrida B. Korosso
Judge
18th September 2017

Ruling delivered in Chambers this day, in the presence of Ms. Elizabeth Mkunde- Learned State Attorney for the Respondent Republic and Mr. Gwamaka Mwaikugile, Learned Advocate for the applicants. In the presence of the all the Applicants.



Winfrida B. Korosso
Judge
18th September 2017