

IN THE HIGH COURT OF TANZANIA
THE CORRUPTION AND ECONOMIC CRIMES DIVISION
DODOMA SUB-REGISTRY
AT DODOMA

MISC. ECONOMIC CRIMES APPL. CASE NO. 08 OF 2017

(Originating from Kondoa District Court Criminal Case No.3/2017)

HIMID s/o HAMAD @ HIMID.....APPLICANT

Versus

THE REPUBLICRESPONDENT

R U L I N G

09/10 & 16/11/2017

MATOGOLO, J.

The applicant Himid Hamad @ Hamid was arraigned before the district court of Kondoa charged with the offence of unlawful possession of Government Trophy c/s 86(1)(2)(b) 3(a) and S.111(d)(c) of the Wildlife conservation Act, No.5 of 2009, read together with S.60 (2) of the Economic and Organized Crime Control Act, [Cap.200 R.E.2002] and paragraph 14(d) of the first schedule to.

It was alleged that on 12th day of May 2017 at about 11.00 hrs at Mnarani street, within Kondoa district in Dodoma region the applicant was found in unlawful possession of two Elephant Tusks weighing 1.11 kgs and valued at Tshs. 33,596,700, being the property of Tanzania Government.

The applicant has filed this application to this court. The application is by chamber summons made under section 148(3) of the Criminal procedure Act, [Cap.20 R.E.2002] and Section 29 and 36(1) of the Economic and organized crime control Act, [Cap.200 R.E.2002] as

amended by Written Laws (Miscellaneous Amendments) Act No.6 of 2016. The same is supported by affidavit taken by the applicant. The respondent/Republic, was served with the chamber summons and the accompanying affidavit, but opted not to file counter affidavit.

On the date of hearing of this application, the applicant appeared in person, unrepresented. Miss Magesa learned State Attorney appeared for the respondent/Republic. The applicant stated that he was told by the lower court where he is charged that, that court has no jurisdiction to hear his application that is why he filed his application to this court. The applicant prayed that the reasons he gave in his affidavit be adopted and be considered. On her part Miss Magesa learned State Attorney did not object the application by the applicant.

She submitted that the applicant is charged in the district court of Kondoa with the offence of unlawful possession of Government Trophies c/s 86(1)(2) (b) and S.3(a) and 3(b) (c) of the Wildlife conservation Act, No.5 of 2009 read together with Section 60(2) of the Economic and organized Crime Control Act [Cap.200 R.E.2002] and paragraph 14 of the 1st schedule to. That the applicant was found possessing elephant tusks valued at Tshs. 33,596,700 without any permit from the Director of Wildlife. She said the applicant could not be granted bail by the district court of Kondoa except by this court. That the offence is bailable under Section 148(3) of the CPA, and section 29 and 36(1) of the Economic and organized Crime Control Act, as amended by Act No.6 of 2016. She said as the amount of the property applicant was found possessing exceeds Tshs. 10 million, then one of the conditions to be imposed by the court is for the

applicant to deposit in court cash half of the value of the property involved and the remaining half is to be fulfilled by executing a bond.

The learned State Attorney said as the offence applicant stands charged is bailable one, they have no reason to object bail provided that the applicant comply with the bail conditions which the court will prescribe.

Having heard from the parties, that is the applicant as well as miss Magesa learned State Attorney on behalf of the respondent; and after go through the relevant documents filed by the applicant, that is the chamber summons and the accompanying affidavit, the only issue for determination is whether the application is properly before the court and the court is moved to grant the remedy sought by the applicant.

As explained above, the applicant is facing the charge of unlawful possession of Government Trophies. The offence falls under Section 86(1)(2)(b)(3)(a) of the Wildlife conservation Act, No.5/2009 read together with Section 60(2) of the Economic and Organized Crime Control Act and paragraph 14(d) of the first schedule to. The application is preferred under Section 148(3) of the CPA, Section 29 and 36 (1) of the Economic and Organized Crime Control Act, [Cap.200 R.E.2002] as amended by written Law Miscellaneous Amendment Act No.6 of 2016.

But Section 29 was cited in a general way without citing the specific relevant subsection and paragraph.

However there are two different schools of thought on non-citation and wrong citation of enabling provisions.

One school of thought subscribes to the view that wrong citation of the law, section, subsection and/or paragraphs of the law or non-citation of the law will not move the court to do what is asked and renders the application incompetent. See **Edward Bachwa and 3 other Vs. The Attorney General and another**, Civil Application No.128/2006 CAT (unreported). **NBC Vs. Sadrudin Meghi**, Civil Application No.2/1997 CAT (unreported).

But the other school of thought emphasizes on the need for the court to do substantial justice instead of relying on technicalities in cases of wrong citation or non-citation of the enabling provision of the law by the parties to the suit. See **Samson Ng'walinda Vs. The commissioner General Tanzania revenue Authority**, Civil Appeal No.86/2008 CAT (unreported) and **Elizabeth Michael @ Lulu Vs. Republic**, Misc. Criminal Application No.46 of 2012 High Court at Dar es Salaam (unreported). The applicant in this application is the lay person and he prepared the application himself. He cited only Section 29, but did not cite subsection 4(d) of Section 29. Taking into account that the applicant is a day person and unrepresented by a lawyer, I subscribe to the second school of thought of the need to do justice instead of being much tied up by legal technicalities. Apart from Section 29 of the Economic and Organized Crime control Act, the applicant has also cited Section 148(3) of the CPA, Section 29 (4) (d) provides:

"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 to the High Court."

This section under paragraph 3 was amended by Section 9 of the written laws (Miscellaneous Amendments) Act, No.3/2016 in which the words "*High Court sitting as the Economic Crimes Court*" was substituted to the words "Corruption and Economic crimes Division of the High Court." On the other hand Section 148(3) CPA provides:

"The High Court may, subject to subsections (4) and (5) of this Section, in any case direct that any person be admitted to bail or that the bail required by a subordinate court or a police officer be reduced".

The offence which the applicant is charged is under paragraph 14(d) of the first schedule to the Act. This is an economic offence and this court has jurisdiction to entertain it by virtue of Section 3(3) (a) of Act No.3/2016 and the procedure for bail is provided under Section 36(1) and Section 29(4) d of the Economic and Organized Crime Control Act.

The applicant has also cited Act No.6/2016 as an Act amending Cap.200 RE.2002. However I was unable to trace that purported Act of parliament. I think the applicant has in mind Act No.3 of 2016, which before it was passed, it was referred to as bill supplement No.6/2016. But after been passed the same is referred as written Laws (Miscellaneous Amendments) Act, No.3/2016, so the proper amendment Act is No.3/2016 and not 6/2016.

However despite this minor short coming, as I pointed out above, and as was correctly submitted by Miss Magesa learned State Attorney, this

court has jurisdiction to entertain the application, and the applicant has moved this court to consider his application for bail.

It was also correctly submitted by Miss Magesa learned State Attorney that the offence which the applicant is charged with is bailable one. But as the value of the property involved exceeds ten million shillings, then the requirements provided under Section 36(1) of the Economic and Organized Crime Control Act, must be complied with. That is the applicant has to deposit in court cash money equal to half of the value of the property involved and the other half to be satisfied by signing a bond.

It follows therefore that the application is granted. The applicant may be released on bail upon fulfilling the following conditions:

1. The applicant has to deposit in Court cash Tshs.16,798,350/= which is half of Tshs. 33,596,200/=. Alternatively the applicant has to deposit Title deed or any other form of evidence of ownership of immovable proper of value not less than Tshs. 16,798,350/=. The immovable property must be free from any incumbrances and the Title deed shall be approved by the Registrar of Titles, Commissioner for land or any other recognized person acting on that behalf. If the property has no Title deed, then shall have approval from the local leaders, the street chairperson and the Ward Executive officer of the place where the property is located.
2. The applicant shall furnish two reliable sureties who each will sign a bond in the sum of Tshs. 5,000,000/= and one must be Government employee, who must have identification letter from employer. The

other if not Government employee must be a reputable person in the society/community he is living and must have immovable property recognized by the local leaders and must have identification letter from the Ward Executive officer.

3. The applicant has to surrender his passport or any other travelling document to the OCCID Kondoa.
4. The applicant shall not travel outside the jurisdiction of the District Court of Kondoa without prior permission from the Resident Magistrate's Incharge of Kondoa District Court.
5. The applicant has to report to the OCCID Kondoa on every Monday of the first and third week.
6. The Resident Magistrate incharge Kondoa has to approve all bail documents and sureties before the applicant is released on bail.

Ordered accordingly.




F.N. Matogolo
JUDGE

16/11/2017