

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

**MISC. ECONOMIC CAUSE NO. 16 OF 2017**

(Originating from Dar es Salaam Resident Magistrates' Court at Kisutu in  
Economic Case No. 21 of 2017)

**1. JUMA KAMBI KONG'WA ..... 1<sup>ST</sup> APPLICANT**  
**2. SENEI ABAS SEKO ..... 2<sup>ND</sup> APPLICANT**

VERSUS

**THE REPUBLIC ..... RESPONDENT**

Date of Last Order: - 30/06/2017

Date of Ruling: - 05/07/2017

**RULING**

**F.N. MATOGOLO, J.**

In the Court of Resident Magistrates of Dar es salaam at Kisutu, the applicants Juma Kambi Kong'wa and Senei Abas Seko are charged with a single count of unlawful possession of Government trophies contrary to section 86(1), (2)(c)(ii) and (3) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14(d) of the first schedule and section 57(1) of the Economic and Organized Crimes Act, [CAP. 200 R.E, 2002] as amended. It was alleged that; on 8<sup>th</sup> day of May, 2017 at Chanika – Zingiziwa area within Ilala District in Dar es Salaam Region, the accused persons (applicants) jointly, were found in possession of Government trophies to wit: six (6) pieces of elephant tusks valued at USD 30,000

equivalent to sixty eight million, five hundred and fifty thousand shillings (Tshs. 68,550,000/=) only, the property of the Government of the United Republic of Tanzania without permit from the Director of Wildlife.

Pending hearing of the charged offences, the applicants have filed an application to this court for bail. The application is by chamber summons preferred under sections 29(4)(d) of the Economic and Organized Crime Control Act, [CAP. 200 R.E, 2002] as amended by Act No. 3 of 2016 and 148(1) and (3) of the Criminal Procedure Act, [CAP. 20 R.E, 2002]. The chamber summons is supported by an affidavit of Juma A.M. Nassoro, learned advocate who is asking this Court to grant bail to the applicants. In response, the Respondent filed a Counter Affidavit deposed by Florentina Sumawe, learned State Attorney.

In his affidavit, the applicant's counsel stated that; the charged offence is bailable one and the jurisdiction to grant bail is vested to this Court and that the applicants are innocent Tanzanian nationals and of good character with their places of abode in Ilala District, Dar es Salaam Region. He added that, the applicants undertake to abide with all bail conditions as this court will prescribe and that they will attend in Court in all dates to be scheduled by the Court.

The application was heard orally whereas the applicants engaged services of Mr. Juma A.M. Nassoro, learned advocate while the Respondent was represented by Mr. Salim Msemo, learned State Attorney.

Addressing the Court on the bail application, the applicants' learned counsel prayed for the affidavit in support of the chamber summons to form integral part of his submission. Besides, the applicants' counsel submitted that basically, the respondent has not objected bail in her Counter Affidavit. He prayed for the applicants to be granted bail on conditions as prescribed by law.

In response; Mr. Salim Msemu learned State Attorney essentially did not object bail. He rather urged the Court to be guided by the legal requirements provided under section 36(5)(a) of the Economic and Organized Crimes Act (supra) regarding bail conditions in case the Court is pleased to grant bail to the applicants considering the fact that the charged offence fall under the scheduled serious offences.

Additionally Mr. Msemu submitted that, the cited provisions of section 148(1) and (3) of the Criminal Procedure Act are inapplicable in terms of section 20(1) & (2) of the Economic and Organized Crimes Act which stipulates circumstances under which other laws (the Criminal Procedure Act inclusive, can be applied. The learned State Attorney added that, the Economic and Organized Crimes Act sufficiently caters for all substantive and procedural aspects regarding economic and organized crimes, hence, no existence of any lacuna.

Mr. Msemu learned State Attorney referred this Court to a Court of Appeal decision in the case of **Edward D. Kambuga and another vs. Republic, [1990] T.L.R 84** where the Court held that:-

**"(ii) As the procedure for granting bail is fully provided for in the Economic and Organized Crime Control Act, 1984 the procedure under the Criminal Procedure Act, 1985 did not apply".**

In the circumstances, he argued such citation to amount to wrong or non citation thus urging for the court to properly advice the applicants so that they may invoke the proper provisions for the sought remedy. The learned State Attorney cited a Court of Appeal decision in **Chama cha Walimu Tanzania vs. the Attorney General**, Civil Application No. 151/2008, (Unreported) to support his argument.

In rejoinder; Mr. Nassoro, learned advocate submitted that; the Court has been properly moved in terms of section 29(4)(d) of the Economic and Organized Crimes Act which is the proper section for bail application. He added, if the Court finds the other cited section 148(1) and (3) of the Criminal Procedure Act inapplicable in the matter under scrutiny, the same is harmless for, it cannot render the application incompetent provided the enabling provision has been cited. He referred the Court to a Court of Appeal decision in **Duda Dungali vs. the Republic**, Criminal Application No. 5/2014, (Mbeya Registry), (Unreported) where the Court succinctly underscored to that effect.

The applicants' learned counsel thus distinguished the cited case of **Chama cha Walimu Tanzania vs. the Attorney General** (supra). He further urged this Court not to be unnecessarily tied up with legal technicalities as provided for under Article 107A of the Constitution of the United Republic of Tanzania, [CAP. 2 R.E, 2002] in justice dispensation.

Mr. Nassoro learned advocate maintained his earlier prayer for the applicants to be granted bail pending hearing of their case.

I have gone through the Court record and the respective submissions by the learned counsel for the applicants and the learned State Attorney for the Respondent/Republic, there are questions to be resolved by this court following the arguments raised by the respective counsel for the applicants and the learned State Attorney.

Starting with the raised legal point by the learned State Attorney touching competence of the application, as earlier stated, this application is by chamber summons made under sections 29(4)(d) of the Economic and Organized Crime Control Act as amended by Act No. 3 of 2016 and 148(1) and (3) of the Criminal Procedure Act .

It was also correctly submitted by Mr. Nassoro that section 29(4)(d) of the Economic and Organized Crime Control Act is the proper provision for bail applications like the one under scrutiny. In the circumstances, the question is, what is the legal effect of citing proper and improper provisions in a single application altogether?

It was correctly submitted by the applicants' counsel, that cluster citation of sections cannot render an application incompetent. Though essentially parties are required to be specific in the reliefs they sought as to the enabling provisions, but citation of proper sections alongside improper sections can be tolerated in the interest of substantial justice

provided the enabling provision is cited. In the cited in the case of **Duda Dungali vs. the Republic** (supra), the Court stated:-

“ ..... The general rule governing this Court’s powers to extend time is Rule 10. This Rule is cited in the present application. The time line for presenting a reference is set out in Rule 62(1)(a) which is also cited in this application. These two provisions are sufficient to clothe me with jurisdiction to hear the application. The citing of Rule 4(1) and 66(1)(a) which are irrelevant and/or a mere superfluity, does not oust this Court’s jurisdiction to hear and determine an application under Rules 10 and 62(1)(a) of the Rules. So, in my opinion, the superfluous citation of the Rules is harmless, particularly so, as the respondent did not say how she was prejudiced thereby”.

In another decision, the Court of Appeal in **Bitan International Enterprises Ltd vs. Mished Kotak**, Civil Appeal No. 60 of 2012, (Dar es Salaam Registry), (Unreported) stated that:-

“On our part, we think the decision of this Court in **Abdallah Hassani vs. Juma Hamis Sekiboko** (supra) which Mr. Mnyele referred to us, articulates the correct answer to the jurisdictional question where a provision that sufficiently confers jurisdiction in the court is cited alongside inapplicable or superfluous provision. In **Abdallah Hassani vs. Juma Hamis Sekiboko** (supra), the application to the High Court for revision was made under section 44 (1) (a) and (b) of the Magistrates' Courts Act, Cap. 11 read together with section 95 of the CPC. With regard to the subject matter of the revision in the High Court, the Court noted that the applicant should have cited section 44 (1) (b) only. All

**the same High Court did not lose its revisional jurisdiction only because inapplicable provisions were in addition cited. The Court made the following statement of law which is as apt to the instant appeal before us:**

**“...We have gone into the details of the provisions of section 44 because we are satisfied that the appellant’s application for revision was wrongly entitled. He should have indicated section 44(1) (b) only. Although the court should not be made to swim in or pick and choose from a cocktail of sections of the law simply heaped up by a party in an application or action, in the present situation we are satisfied that citing subsection (a) as well as was superfluous but that this did not affect competency of the application for subsection (b) is clearly indicated.” [Emphasis added].**

**In the upshot of the above, the High Court erred in law in striking out the Land Revision No. 58 of 2008”.**

This Court fully subscribes to the above sound position of law in the interest and for the sake of substantial justice. It is from the above this Court overrules the raised point of law by Mr. Salim Msemo, learned State Attorney as to citation of wrong provisions.

Turning to the sought bail; as correctly submitted by the applicants’ counsel and as clearly stated by the learned State Attorney, that basically the respondent does not object bail to the applicants. Moreover, as the charged offence falls under bailable offences in terms of the Economic and Organized Crimes Act. Likewise, as this Court has not been availed with any reasons on record warranting refusal of bail to the applicants, this

Court grants the application in terms of section 29(4)(d) of the Economic and Organized Crimes Act. And taking into account section 36(5)(a) read together with the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016 vesting powers to this Court to impose conditions to an applicant including deposit of cash money or other property equivalent to half the amount or value of actual money or property involved and the remaining half to be executed by bond.

It thus follows that, since the charge involves two applicants (accused persons), they have to share the burden under the principle of sharing as articulated by the Court of Appeal in **Silvester Hillu Dawi & Stephen Leons Mwambene vs. the Director of Public Prosecutions**, Criminal Appeal No. 250 of 2006, (Unreported), (Dar es Salaam Registry).

The applicant can be released on bail upon fulfilling the following conditions;

(1) Each applicant should separately deposit USD 7,500 equivalent to Tshs. 17,137,500/= being half of the involved amount. Alternatively, each applicant should deposit immovable property of value of not less than Tshs. 17,137,500 including deposit of titled deeds of such immovable properties.

(2) Each applicant must also produce two (2) reliable surities who should each separately execute a bond of USD 7,500 equivalent to Tshs. 17,137,500/= which is the remaining half of the amount.



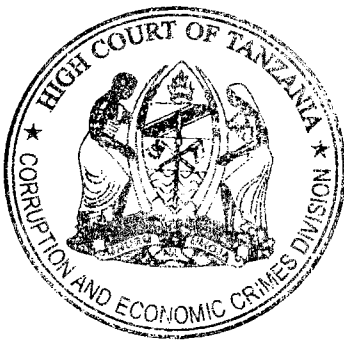
- (3) Each applicant should not leave Dar es Salaam Region without prior permission of the Resident Magistrate in charge of Dar es Salaam Resident Magistrates' Court at Kisutu.
- (4) Each applicant must surrender to Bandari Police Station his passport and any other travelling document(s) he might be possessing.
- (5) Each applicant must report to the Bandari Police Station every Monday before 12:00hrs (noon).
- (6) Each applicant should appear before the Court on the specific time and dates as scheduled by the Dar es Salaam Resident Magistrates' Court at Kisutu.


**It is hereby further ordered that:-**

1. The applicants will remain in custody until the terms pertaining cash deposit or deposit of Title Deeds of immovable properties are met in respect of the referred two limbs of cash deposit or deposit of Title Deeds of immovable properties **AND** bond execution. Ownership of any property should have approval by the Commissioner of Lands and or Registrar of Titles (as the case may be) with clearance regarding legal status as to existence of any encumbrances whatsoever including but not limited to caveats, mortgages, double allocations, joint ownership or ownership in common, any transfer whatsoever amongst or and any other ownership disputes in respect of any pending suit or whatsoever or the like.

2. The surities and bail documents produced by each applicant must be approved by the Resident Magistrate in charge of the court of Resident Magistrates' of Dar es Salaam at Kisutu. By reliable surities means, persons who are in active public service.
3. The Resident Magistrate in charge of Dar es Salaam Resident Magistrates' Court at Kisutu must ensure that all bail conditions are accordingly met and implemented before and after releasing the applicants on bail as above prescribed.

Order accordingly.



  
**F.N. MATOGOLO**  
**JUDGE**  
**05/07/2017**