

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

CORRUPTION AND ECONOMIC CRIMES DIVISION

AT DAR ES SALAAM

MISC. ECONOMIC CAUSE NO. 64 OF 2018

(Originating from the Economic Case No. 14 of 2017 of the Resident Magistrate's Court of Kisutu at Dar es Salaam)

HARRY PAUL @ SANGA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

R U L I N G

Date of Last Order: - 23/11/2018

Date of Ruling: - 27/11/2018

L.L. MASHAKA, J

The applicant has filed this bail application under section 29(4)(d) and 36(1) of the EOCCA, Cap 200 R.E. 2002 as amended by the Written Laws (Miscellaneous Amendment) Act, No. 3 of 2016 by way of chamber summons and supported by affidavit averred by the applicant that the Hon. Court be pleased to grant bail pending trial of Economic Case No. 14 of 2017 before the Resident Magistrate's Court of Dar es Salaam at Kisutu.

The Respondent Republic was served and filed counter affidavit averred by Mr. Candid Joseph Nasua, State Attorney.

During hearing of this application, the applicant had no representation, while the respondent Republic was represented by Mr. Elia Kalonge Atanas, State Attorney.

In support of the application, the applicant prayed to the Court to grant him bail because it is his basic right under the Constitution. The applicant submitted that as per the charge against him is an economic offence this Court has the jurisdiction to grant him bail. He further submitted to the Hon. Court that the economic case facing him Economic Case No. 14 of 2017 is still under investigation and he is in remand. That under Article 13(6)(b) of the Constitution of the United Republic of Tanzania (URT) 1977, it is not right, as an accused person is presumed innocent until proven guilty. That he is innocent and has a right to bail as per the referred provision under the Constitution of the URT 1977. He contended that if he is denied bail it contravenes Article 15 of the Constitution 1977 that every person has a right to live a free life without being placed under restraint unless it is as provided under the law and it goes against the presumption of innocence. The applicant prayed to be admitted to bail by this Court as averred in affidavit that he is eligible for bail under section 36(4) and (5) of the EOCCA.

In reply having heard submission by the applicant, Learned State Attorney for the Respondent submitted that the Respondent Republic after being served this bail application supported by affidavit, filed counter affidavit, sworn by Mr. Candid Joseph Nasua, and prayed it to form part of his submission before the Court.

That the Respondent has no objection to this application because they believe that the applicant has a right to bail and if out on bail, he will not in

any way prejudice the investigation of the economic case. Learned State Attorney prayed to the Court when considering bail to grant reasonable conditions which will ensure the appearance of the applicant before the Resident Magistrate's Court of Dar es Salaam at Kisutu where the economic case is pending. He prayed to the Court to be guided by Section 36(5)(e) of EOCCA Cap 200 R.E 2002.

Having considered the submissions by both parties before the Court, and the fact that the application has conferred jurisdiction to this Court to determine the application, also the fact that the involved property is above ten million shillings therefore there is no question on the jurisdiction of this Court to entertain the matter at hand. The applicant is an accused person in Economic Case No. 14 of 2017 which is pending trial at the Resident Magistrate's Court of Dar es Salaam at Kisutu. The application before the Court is competent having cited the enabling provisions of section 29(4)(d) and 36(1) of the EOCCA, Cap 200 RE 2002 to move this Court.

As stated by Learned State Attorney, the offence charged against the applicant is bailable and had no objection to the Court to grant bail and rightly contended by the applicant that he has a right to be admitted to bail. In the case of the case of **Tito Douglas Lyimo vs Republic (1979) LRT 55**, the court held that "*bail is a right rather than a privilege unless the court is convinced that to grant, will defeat the ends of justice as a failure of the accused person to appear before the court to stand his trial*". It was observed by the Court of Appeal of Tanzania in the case of **HASSAN OTHMAN HASSAN@ HASANOO vs REPUBLIC, Criminal Appeal No 193 of 2014** that, " *..guided by the principle that an accused person is*

presumed innocent until proved guilty and the purpose of granting bail to an accused person is to let him enjoy his freedom so long as he does not default appearances in court when so required until his rights are determined in the criminal case..." This right may only be denied where there are justifiable reasons to do so but this Court has not been availed any reason warranting refusal of bail to the applicant. Rather the Respondent Republic has no objection and for the Court to be guided by section 36(5) of Cap 200, R.E. 2002 when considering appropriate bail conditions.

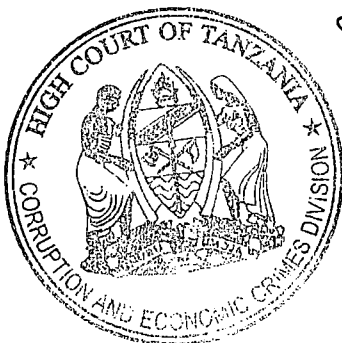
Consequently, the applicant HARRY PAUL @SANGA is hereby admitted to bail subject to fulfilling the following conditions:

1. The applicant to deposit cash **Tshs. 16,770,000/=** being half of the alleged value of the government trophy which is Tshs. **33,540,000/=** **Alternatively**, the applicant to deposit title deed of any immovable property of value not less than **Tshs. 16,770,000/=**. The immovable property must be free from any encumbrances and the title deed shall be approved by the Registrar of Titles or any other recognized person acting on behalf and must be accompanied by a valuation report from the Government valuer. If the property has no title deed, then shall have approval from the local authorities of the place where the property is located.
2. The applicant must provide two reliable sureties who are to execute a bond of Tshs. 5,000,000/- each. One of the two sureties must be employed in the service of the Government of United Republic of

Tanzania or private institution and the other must be a reputable person in the society.

3. The applicant shall not leave the jurisdiction of this Court without permission from the Resident Magistrate in Charge of the Resident Magistrate's Court of Dar es Salaam at Kisutu.
4. If in possession of any travelling documents including passport, the applicant to surrender to the OC CID – Kimara Police Station.
5. The applicant to report once every month to the OC CID Kimara Police Station or upon a schedule provided by the said OC CID.
6. The applicant to appear before the court on the specified date and time as scheduled by the Resident Magistrate Court of Dar es Salaam at Kisutu.
7. Verification of sureties and bond documents for the applicant shall be approved by the Resident Magistrate in Charge of the Resident Magistrate's Court of Dar es Salaam at Kisutu, before the applicant is released on bail.

It is so ordered.




L. L. MASHAKA
JUDGE
27/11/2018