

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

**MISCELLANEOUS ECONOMIC CAUSE NO. 26,22,25 & 27 OF 2018**  
**(Consolidated)**

(Originating from economic crime case No. 26 of 2018  
RM's Court of Kisutu Dar es salaam)

**AUGUSTINO JOSEPH MALILA AND FOUR OTHERS.... APPLICANTS**

VERSUS

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

**R U L I N G**

20/6/ & 22/6/2018

**Matogolo, J.**

The applicants namely Amandi Lorence Mzilo, Athuman Omary Kilibe, Donald Mabubi, Augustino Joseph Malila and Yusufu Shija Mayunga were arraigned in the Court of Resident Magistrates of Dar-es-Salaam at Kisutu jointly charged in three counts for conspiracy, stealing and occasioning loss to a specified authority as first second and third count respectively.

The fourth count was preferred as alternative count in which Donald Mabubi, Amandi Lorence Mzilo, Athuman Omary Kilibe and Joseph Paulo Many are charged with failure to prevent commission of an offence.

With the exception of the first accused Yusuf Shija Mayunga who is an engineer, the rest are watchmen. All are employed by the Tanzania Broadcasting Corporation (TBC) at Salasala Kunduchi within the District of

Kinondoni where copper X, property of TBC was alleged to have been stolen or disappeared.

The applicants have come to this Court with their applications for bail separately, only Amandi Lorence Mzilo and Athuman Omary Kilibe filed joint application which was registered as Miscellaneous Economic Cause No. 22 of 2018. The rest each preferred his own application separately as follows:

Donald Mabubi (Miscellaneous Economic Cause No.25 of 2018) Augustino Joseph Malila (Miscellaneous Economic Cause No.26/2018), and Yusufu Shija Mayunga (Miscellaneous Economic Cause No.27/2018). It is only Joseph Paulo Manyamba among the six accused persons did not file application. For purpose of convenience and quick disposition of the applications, on 08/6/2018 an order was made in which all the above mentioned applications were consolidated so that they can be heard as one. All applications are by chamber summons made under Section 29(4)(d) and Section 36(1) of the Economic and Organized Crime Control Act, [Cap.200 RE. 2002] as amended by Act No.3/2016. The applicants were represented by learned counsel. Mr. Alex Enock represented the first two applicants that is Amandi Lorence Mzilo and Athuman Omary Kilibe. Mr. Godlisten Elisante Isowe represented Donald Mabubi, Mr. Zephryne Nyalugenda Galeba appeared for Augustino Joseph Malila and Mr. Hassan Kiangio appeared for Yusufu Shija Mayunga.

At the hearing the above mentioned learned advocates appeared for the applicants, while M/s Elizabeth Mkunde learned State Attorney appeared for the respondent. Mr. Felix Makene learned advocate,

submitted on behalf of the rest of other advocates. He first prayed for the applicants' affidavits to be adopted and their contents form part of his submission. The learned advocate basically argued that the Court of Resident Magistrate of Dar es salaam at Kisutu could not admit the applicants to bail because it lacks jurisdiction.

It is this Court which has jurisdiction, that the offences which applicants are charged are bailable offences, and the applicants have right to bail as their basic right derived from the principle of presumption of innocence. Mr. Felix Makene referred this Court to two decided cases of **Director of Public Prosecutions Vs. Daudi Pete (1993) TLR 22** and **Tito Douglas Lyimo v.R. (1979) LRT 55**, in which it was held that bail is a right and not a privilege. He argued further that this Court has discretionary powers to grant bail to the applicants, the applicants are people of good reputation in the community they live and in their employment. They have never previously being charged with a criminal offence and convicted or imprisoned. They have never jumped bail or fail to comply with bail conditions after being granted bail and that if granted bail they will not prejudice safety or interest of the Republic. He further stated that the applicants have permanent place of abode within the jurisdiction of this Court and have reliable sureties owning immovable properties and will be available all the time during their trial. Mr. Felix Makene therefore prayed to this Court to release the applicants on bail.

On her part Elizabeth Mkunde learned State Attorney essentially did not object bail. She agreed that the charged offences are bailable. And that the applicants have right to bail.

But she only prayed to this Court while considering to release the applicants on bail, should be guided by the requirements of Section 36(5) and (6) of the Act due to the nature of the offences applicant are facing.

I have gone through the chamber summonses along with the accompanying affidavits filed by the applicants. The same are proper before the Court. The provisions which the applicants' learned advocates cited are proper enabling provisions for purpose of this application. The respondent did not object the application as was expressly submitted by Elizabeth Mkunde learned State Attorney. This Court is not availed with any facts warranting denial of bail to the applicants and importantly the charged offences are bailable. Given those circumstances, I grant the application.

The applicants may be released on bail upon fulfilling the following conditions:-

- (1) Each applicant shall deposit in Court cash Tshs. 75,000,000/= which is the estimated half of the alleged occasioned loss or value of the stolen property divided to six accused persons under the principle of sharing as laid down in the case of **Silvester Hillu Dawi and Stephen Leons Mwambene V. The Director of Public Prosecutions**, criminal Appeal No.250/2006 (CAT), DSM

**ALTERNATIVELY**

Each applicant shall deposit Title deed of immovable property or any acceptable form of evidence of ownership. The

immovable property should be of value not less than Tshs. 75,000,000/= located within Dar es Salaam Region.

- (2) Each applicant shall furnish two reliable sureties who each shall sign a bond of Tshs.10,000,000/=. The sureties must be persons of good reputation, one being a Government employee. The other may be employee from any private Sector and residents of Dar Es salaam Region.
- (3) The applicants have to surrender their passports or any other travel document (if any) to the RCO DSM, police special zone.
- (4) The applicants shall not leave the jurisdiction of the Court of Resident Magistrate of Dar es Salaam at Kisutu without prior permission by the Resident Magistrate Incharge of Kisutu RM's Court.
- (5) The applicants have to report to the RCO DSM Police special zone once in a month on Monday of the second week.
- (6) The Resident Magistrate Incharge of Resident Magistrate Court of Kisutu shall approve the surities and all bail documents before the applicants are released on bail.

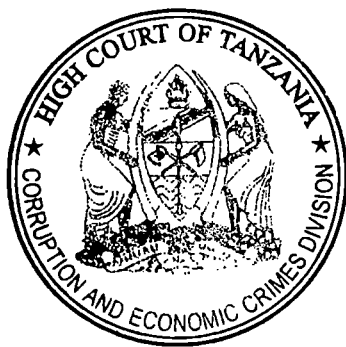
Order accordingly.




  
**F.N.MATOGOLO**  
**JUDGE**  
**22/06/2018**

**Court:**

Ruling delivered this 22<sup>nd</sup> day of June, 2018 in the presence of Mr. Kandid Nassua learned State Attorney for the respondent, and in the presence of Mr. Zephrrine Galeba who also hold briefs for Mr. Hassan Kiangio Godlisten Isowe, Alex Enock and Felix Makene advocates but in the absence of the applicants.



  
**F.N. MATOGOLO**  
**JUDGE**  
**22/06/2018**