

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

ECONOMIC CRIME REGISTRY

AT DAR ES SALAAM

MISC. ECONOMIC CAUSE NO. 53 OF 2017

(Arising from Economic Crime Case No 78 of 2017 pending at
Resident Magistrate Court of Dar es Salaam at Kisutu)

1. SILVERIOUS MGAIZA

2. ABDALLAH ATHUMANI

VERSUS

THE REPUBLIC

RULING

Korosso, J.

The application before the Court has been filed by the applicants, Silverious Mgaiza (1st applicant) and Abdallah Athumani (2nd applicant) pursuant to section 29(4)(d) and 36(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2002, Section 148(1) of the Criminal Procedure Act, Cap 20 RE 2002 and Article 13(6)(b) of the Constitution of the United Republic of Tanzania of 1977(as amended from time to time) and any other enabling provision of the law. An affidavit sworn by Godfrey Boniface Taisamo, learned Advocate for the applicants supports the application. The application sought first for the Court to be pleased to admit the applicants to bail

pending trial and determination of charges in respect of Economic Crimes Case No. 78 of 2017 pending in the Court of Resident Magistrate of Dar es Salaam at Kisutu and second, any other orders the Honorable Court deems proper to grant in the circumstances of the application.

On the part of the Respondent Republic represented by Ms Gilliani, Learned Senior State Attorney they submitted that upon scrutiny of the application and related documents they found no need to counter the affidavit. In effect they had no objection to the application finding that the offences facing the applicants as expounded in the charge sheet are bailable. That the jurisdiction is with this Court to entertain the application bearing in mind the offence charged and the fact that the DPP has yet to consent for the charges to be heard in the subordinate Court. They left it to the Court to exercise its discretion whether or not to grant bail to the applicants praying that if the applicants are granted bail they should fulfill the conditions provided by the Court.

The counsel for the applicants Mr Taisamo Learned Advocate when amplifying the contents of the application, submitted that the application is competent having cited proper provisions to move the Court to hear and determine the matter. He contended further that the Court is vested with jurisdiction in view of the charges facing the applicants being economic offences and the fact that the application arises from a pending economic crime case at RM's Court Dar es Salaam at Kisutu. That there is also the fact that the property

charged is above ten million shillings. The counsel further contended that all the offences in the charge sheet facing the applicants are bailable and that the applicants have no other charges facing them nor have they have ever been charged or absconded or jumped bail before. The applicants counsel prayed for the Court to exercise its discretion and admit them to bail and committed themselves to fulfill all the conditions meted by the Court when they be admitted to bail.

The Court has carefully considered all the submissions and all the documents before it, and first, we are satisfied that having regard to the fact that the charged offences are economic offences and the total amount of charged property is 83,317,500/- and thus above ten million shillings and also the fact that the application arises from a pending economic case at RM's Court Dar es Salaam Kisutu, therefore there is no doubt that this Court is vested with jurisdiction to hear and determine the matter a fact not disputed by counsels for the applicants and respondents. The Court having considered the provision cited to move the Court to determine the application is satisfied that in view of the pertaining circumstances alluded to above, section 29(4)(d) and section 36(1) of the EOCCA, Cap 200 RE 2002 are proper to enable the Court proceed to consider and determine the matter before it. Therefore there is no doubt on the competency of the application before the Court.

The Court also finds that, there being no contention that the offences charged against the applicants are bailable both counsels for the parties having alluded to this. There is also the fact that the

Respondent Republic have not registered any objection to the application nor is there any evidence that the applicants have previously absconded to bail or such orders of the Court. The law with regard to grant or refusal of bail is well settled. Case law has established that the Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Matters to be considered in an application for bail we find include: nature and gravity of the offence; severity of the punishment in the event of conviction; and the danger of an accused absconding or fleeing if released on bail and therefore not appearing for his trial when set (see ***Basil Pesambili Mramba and Another vs the Republic***, Misc. Criminal Application No. 54 of 2008 and ***DPP vs Li Ling Ling***, Misc. Economic Application No. 129 of 2015).

This being the case the Court finds no reason not to exercise its discretion and grant the prayers by the applicant. Consequently, **SYLVERIOUS NGAIZA** (1ST Applicant) and **ABDALLAH ATHUMAN** (2nd Applicant) are hereby Admitted to bail subject to the set conditions hereunder:

1. There being two accused person in the charges facing them in Economic Crimes Case No. 78 of 2017, Resident Magistrate's Court of Dar es Salaam Region at Kisutu, guided by the principle of sharing, each of the applicants, is to deposit cash, Tshs. 20,829,325/- or immovable property of equivalent amount. (83,317,000/- x 1/2 divided by 2).

2. Each applicant is to provide two reliable sureties who are to execute a bond of Tshs. 5,000,000/- each. One of the two sureties for each applicant must be employed in the service of the Government of the United Republic of Tanzania or a Public Institution.
3. 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.
4. Each applicant to surrender passports and other travelling documents to the Resident Magistrate, of Resident Magistrate Court of Dar es Salaam, at Kisutu.
5. The applicants to Report to the Regional Crimes Officer- Dar es Salaam at a schedule to be provided by the RCO Dar es Salaam.
6. Verification of sureties and bond documents for all the applicants shall be effected by a Resident Magistrate at the Resident Magistrate Court of Dar es Salaam, at Kisutu.



Winfrida B. Korosso
Judge
11th January 2018

Ruling is delivered in Chambers this day in the presence of Mr. Taisamo, learned Advocate representing the applicants and Ms. Gilliani, Leaned Senior State Attorney for the Respondent Republic.

Also present are Silverious Mgaiza (1st applicant) and Abdallah Athumani (2nd applicant).



Winfrida B. Korosso

Judge

11th January 2018