

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

MISC. ECONOMIC CAUSE NO. 35 OF 2018

(Arising from Economic Crime Case No. 33 of 2018 in the Resident Magistrates Court of Dar es Salaam Region at Kisutu)

- 1. JOHN MATHEW SWAI**
- 2. DENNIS BALTAZAR LYIMO**
- 3. OMARI JUMA KAZEMBE**
- 4. NEHEMIA HUMPHREY SHEKIONDO**

Versus

REPUBLIC

RULING

Korosso, J.

The application is filed by the above mentioned applicants under a certificate of urgency by means of chamber summons, supported by an affidavit deposed by Alex Mushumbusi, a duly instructed advocate for all applicants. The application is made under section 29(4)(d) and 36(1), 36(5)(a),(b)(c) and (d), Section 36(6)(a)(b) and (c) and 36(7) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 (EOCCA) and reliefs sought are that the applicants be heard on an application for bail.

In the affidavit supporting the application the deponent avers that the applicants face charges related to various offences that include and economic crimes pending at the Kisutu RMs Court in Economic Crime Case No. 33 of 2018 as reflected in the copy of the charge sheet

appendaged to the affidavit as averred in paragraph 3. It was revealed that the applicants are employees of the Tanzania Electric Supply Company Limited (TANESCO) at various capacities respectively. The value of the property charges is Tshs. 53,966, 476,000/- which is above ten million shillings and thus rendering jurisdiction on this Court to hear and determine the bail application. The applicants also state that they reside in Dar es Salaam and have never previously been arrested or charged with any criminal offence. The counsel for the applicants through oral submissions prayed that the applicants be granted bail as it is their right within the known principle guiding criminal charges that is, accused persons are innocent until proven guilty.

On the part of the respondents, it is on record that they filed a counter affidavit sworn by Elizabeth Mkunde, a State Attorney at the National Prosecution Service duly instructed to represent the Republic in this matter. The respondents have not registered any objection to the application vide the counter affidavit or oral submissions in Court. The respondents concede to the competency of the application before the Court, to the jurisdiction of this Court to determine the application and also to the fact that bail is a right of the accused persons. Their prayer was for the Court when determining the application to bear in mind the serious nature of the offence and its effect on the economy of the country and to be guided by the provisions of section 36(5) and 36(6) of the EOCCA. There was no rejoinder on the part of the applicants.

We have gone through the evidence and the submissions from both parties before the Court and we are satisfied that both parties have no quarrel with the competence of the application, a fact this Court also

subscribes to in view of the cited provisions to move the Court which are proper and also the competency of the pleadings before this Court. The parties also have no dispute with the competence of this Court to determine the application having regard to the fact that the charged property value is above ten million shillings, a fact also we concur with the parties and add the fact that the application is made at the stage before committal or hearing has been initiated vide sections 29(4)(d) and 36(1) of EOCCA and case law.

As also submitted by counsels for the applicants and the respondents, a person accused of a bailable offence has the right to be released on bail though it is also important to understand that grant of bail to a person accused of non-bailable offence is matter within the discretion of the Court or an authority mandated with that duty. It has been stated by an Indian case (which this court subscribes to), that bail, "*connotes the process of procuring the release of an accused charged with certain offence by ensuring his future attendance in the court for trial and compelling him to remain within the jurisdiction of the court*" (see **Nathurasu v. State**, 1998 Cri LJ 1762 (Mad)).

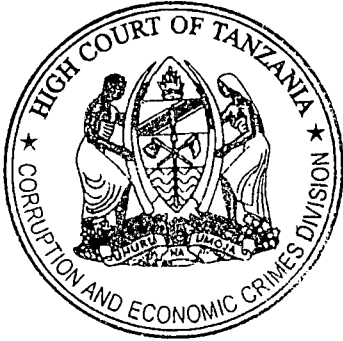
Thus from what is stated above, we find that it is imperative for this Court, while considering an application for grant of bail, such as what is before us, to ensure that various factors are be taken into consideration, such as, the nature and seriousness of the offence, the stage of investigation, a reasonable possibility of the presence of the accused not being secured at the trial, a reasonable apprehension of evidence being tampered with or such other circumstances which may be brought to the notice of the Court which might hamper proper

investigation into the matter. We have also considered the fact that the respondents have not advanced any objection to grant of bail to the applicants.

Having considered all the above factors and the evidence and submissions before this Court, we are satisfied having regard to the circumstances pertaining in this case, there is no justifiable reason to refrain from granting the prayers before the Court as advanced by the applicants. In the premises, JOHN MATHEW SWAI (1st applicant), DENNIS BALTAZAR LYIMO (2nd applicant), OMARI JUMA KAZEMBE (3rd applicant) and NEHEMIA HUMPHREY SHEKIONDO (4th applicant) are Hereby Admitted to bail upon execution of the following conditions:

1. Each applicant to deposit cash Tshs. 6,746,000/- (taking the amount of the loss in the principle of sharing and there being 4 accused persons in the charges they face) or immovable property of equivalent value to the amount ordered to be deposited.
2. Each applicant to provide two reliable sureties who are to execute a bond of Tshs. 1,000,000/- each; satisfy the Court on having residency in the area within the jurisdiction of this Court and be either an employee of the Government or possess a national identify card issued by NIDA.
3. Each applicant not to leave the jurisdiction of this Court without permission from the Resident Magistrate, Resident Magistrate's Court of Dar es Salaam at Kisutu.
4. Each applicant to surrender their passport and any other travelling documents to the Resident Magistrate, Resident Magistrate's Court of Dar es Salaam at Kisutu.

6. Applicants to Report to the Regional Crimes Officer Dar es Salaam according to a schedule to be prescribed by the Regional Crimes officer Dar es Salaam.
7. Verification of the sureties and bond documents shall be executed by a Resident Magistrate, Resident Magistrate's Court of Dar es Salaam at Kisutu.



Winfrida B. Korosso
Judge
14th August 2018