

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

MISC. ECONOMIC CAUSE NO. 39 OF 2018
(Originating from Economic Crime Case No. 57 of 2018 in the Resident
Magistrate's Court of Dar es Salaam at KISUTU)

LILIAN JOEL HOSEA APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

R U L I N G

Date of Last Order: 27/08/2018

Date of Ruling: 29/08/2018

L.L.MASHAKA, J.

This Ruling is in respect of an application for bail made by way of chamber summons pursuant to Section 29(4) (d) and Section 36(1) of the Economic and Organized Crimes Control Act, [CAP 200 R.E, 2002]. The applicant Lilian Joel Hosea prayed for this Hon. Court to grant her bail and on reasonable conditions, which the Hon. Court may deem fit to grant, pending trial in Economic Crime Case No.57 of 2018 at the Resident Magistrate's Court of Dar es Salaam at Kisutu. The application is supported

by affidavit deposed by one Frederick Bernard Msumali, who is also the Advocate representing the applicant.

At the outset, Learned State Attorney submitted to the Court that counter affidavit filed by the respondent had some fatal errors, which contravene Section 8 of the Notaries Public and Commissioner for Oaths Act, [Cap 12 RE 2002] as the jurat of attestation is not dated. She prayed that the Hon. Court to disregard the defective counter affidavit and are ready to proceed with hearing of the application. Learned Counsel for the applicant had no objection to the prayer. The Court struck out the defective counter affidavit and proceeded with hearing of the application.

During hearing, Mr. Frederick Msumali Learned Advocate, represented the applicant, while Ms. Elizabeth Mkunde, Learned State Attorney assisted by Mr. Faraji Ngukah, Learned State Attorney represented the Respondent Republic. The application was by way of oral submissions.

As earlier stated the Respondent Republic decided not to file counter affidavit after striking out defective counter affidavit and was ready to proceed with hearing of the bail application.

It is imperative to provide a short background to this application, that the applicant was arraigned in the Resident Magistrate's Court of Dar es salaam at Kisutu and charged with three counts in Economic Crime Case No. 57 of 2018; the **first count** being conspiracy to commit an offence contrary to Section 384 of the Penal Code [CAP 16 R.E 2002], the **second count** being stealing by servant contrary to Section 258 and 271 of the Penal Code [CAP 16 R.E 2002] and the **third count**, occasioning loss to a specified authority (TTCL) contrary to Paragraph 10(1) of the First

Schedule to Section 57(1) and 60(2) of the Economic and Organized Crimes Control Act [CAP 200 R.E 2002].

Arguing in support of the application, Learned Counsel for the applicant prayed his affidavit to form part of his submission and averred that the application filed under a Certificate of urgency is before this Honorable Court because the value of the loss alleged to have been occasioned to the specified authority (TTCL) of **Tshs. 46, 481,783/=** is above Tshs. 10 million hence the jurisdiction to hear bail application is vested to this Court pursuant to Section 29(4)(d) of the EOCCA [CAP 200 R.E 2002].

Learned Counsel contended that the applicant being a responsible resident and an employee of the Tanzania Telecommunication Company Limited (TTCL) has never been charged prior to the existing criminal charges. That the applicant has a fixed place of abode in Dar es Salaam and has reliable sureties who are ready to execute bond to secure and ensure appearance of the applicant in Court whenever her case is called upon and the sureties are persons of good standing in society willing to stand as sureties. That in the interest of justice the applicant is presumed innocent until proven guilty. Therefore he prayed for this Hon. Court to grant bail to the applicant on conditions it may deem fit pending trial of Economic Crime Case No. 57 of 2018.

In reply Learned State Attorney submitted, that the application is competent on the ground that, the offence the applicant is charged with is an economic offence and the amount is above 10 million Tanzanian shillings. That the Respondent Republic does not object to the prayers for bail from the applicant having regard to the fact that the charged offences are bailable according to the governing laws and the applicant has a right to bail. Learned State Attorney contended further that the Court when

exercising its discretion in consideration of the prayers before it, to be guided with the provision of Section 36(5) and (6) of EOCCA [CAP 200 RE 2002], which provide for mandatory and additional conditions for bail.

Having considered the submissions by both parties before the Court, and the fact that both Learned State Attorney for the Respondent Republic and Learned Counsel for the applicant have not challenged the jurisdiction of this Court to determine the application, also the fact that the alleged loss occasioned to the specified authority TTCL is above ten million shillings therefore there is no doubt on the jurisdiction of this Court to entertain the matter at hand as provided for under Section 29(4)(d) of the EOCCA [Cap 200 RE 2002]. I am also satisfied that the application before the Court is competent having regard to the enabling provisions to move this Court under Section 29(4) (d) and Section 36(1) of the EOCCA, [CAP 200 RE 2002].

Furthermore the offence the applicant stands charged with, is a bailable offence as averred by Learned Counsel for the applicant and Learned State Attorney. The Court takes note that bail is a right as submitted by the applicant and this right may only be denied where there are justifiable reasons to do so but this Court has not been availed any reason to warrant refusal of bail to the applicant.

Therefore the applicant LILIAN JOEL HOSEA is hereby admitted to bail as prayed.

The Court is guided by the provisions of Section 36(5) and (6) of the EOCCA CAP 200 RE 2002, having regard to the fact that the value of the loss to the specified authority in the offence charged is more than ten

million Tanzanian Shillings. **Section 36(5)** of the EOCCA [Cap 200 RE 2002] provides that,

"(a) Where the Court decides to admit an accused person to bail, it shall impose the following conditions on the bail, namely execution of a bond to pay such sum of money as is commensurate to the monetary value and the gravity of the offence concerned: provided that where the offence for which the person is charged involves property whose value is ten million shillings or more, the Court shall require that cash deposit equal to half the value be paid and the rest be secured by execution of a bond;

(b) appearance by the accused before the Court on a specified date at a specified time and place;

(c) surrender by the accused to the police of his passport or any other travel document; and

(d) restriction of the movement of the accused to the area of the town, village or other area of his residence.

Section 36(6) of the EOCCA provides that, the Court may in addition to the mandatory conditions prescribed in sub section (5) impose any one or more of the following conditions, namely –

(a) requiring the accused to report at specified intervals to a police station or other authority in his residence;

(b) requiring the accused to abstain from visiting particular locality or premises, or association with certain specified persons;

(c) any other condition which the Court may deem fit to impose in addition to the preceding conditions, which appear to the Court to be likely to result in the appearance of the accused for the trial or

resumed trial at the time and place required or as may be necessary in the interest of justice or for prevention of crime”.

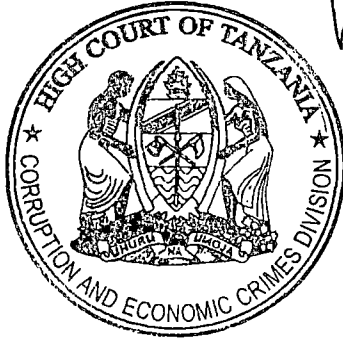
The amount charged in Economic Crime Case No. 57 of 2018 is Tshs. 46,481,783/=. Half of the amount is Tshs. 23,240,892/=.

Consequently, the applicant LILIAN JOEL HOSEA is hereby admitted to bail subject to fulfilling the following conditions:

1. The applicant to deposit cash Tshs. 23,240,892/= being half of the property value amount or immovable property of equivalent amount.
2. The applicant to provide two reliable sureties who are required to execute a bond of Tshs. 10,000,000/- each. One of the two sureties must be employed in the service of the Government of the United Republic of Tanzania or institutions of the private sector.
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. The applicant to surrender her passport or any other travel documents to the Resident Magistrate In charge of the Resident Magistrate's Court Dar es Salaam at Kisutu.
5. The applicant has to report to Regional Crimes Officer (RCO) Dar es Salaam Police Special Zone in every 2 (two) weeks or upon a schedule to be prescribed by the RCO DSM Police Special Zone.
6. The applicant to enter appearance before the Court where the pending proceedings are on the specific dates and time as scheduled by the Resident Magistrate's Court of DSM at Kisutu without failure.

7. The Resident Magistrate In Charge, Resident Magistrate Court of Dar es Salaam at Kisutu to verify sureties and all relevant bond documents presented by the applicant in fulfillment of conditions set herein.

It is so ordered.




L.L. MASHAKA
JUDGE
29/8/2018