

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

MISC. ECONOMIC CAUSE NO. 53 OF 2018

(Arising From Economic Crime Case No. 60 of 2016, Resident
Magistrate's Court of Dar es Salaam Region at Kisutu)

1. MUSTAFA MOHAMED BAKARI @KONDO
2. SALUM JUMA WAKILI
3. SHABAN JUMA HAJI }**APPLICANTS**

VERSUS

REPUBLIC..... RESPONDENT

RULING

12/10 & 15/10/2018

Korosso, J.

We have before the Court a Ruling which comes about upon consideration of an application filed by the above named three applicants, filed through chambers summons supported by an affidavit sworn by Lilian Appolinary Nyambibo who is the advocate for the applicants. The application is pursuant to section 29(4)(d) and section 36(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 and sought that this Court be pleased to grant the application for bail pending trial.

From the oral submissions expounded by the learned Advocate for the applicants who entered appearance in Court on the applicants behalf and the averments in the supporting affidavit to the application, on diverse dates in October and November 2015, the applicants were charged with offences falling under the Wildlife

Conservation Act, No. 5 of 2009 read together with Paragraph 14(b) of the First Schedule and Section 57(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2002 in Economic Case No. 60 of 2016 in the Resident Magistrate's Court of Dar es Salaam Region at Kisutu, where the value involved in the charge, as can be seen from the copy of the charge sheet which is Annexure No. 1, an appendage to the affidavit supporting the application, is US \$ 14070.0, equivalent to Tshs. 30,461,550/- which is without doubt above ten million shillings. That this being the case, it thus rendered the Resident Magistrate Court of Dar es Salaam devoid of jurisdiction to entertain and determine bail application related to the offences charged and pending against the applicants.

The applicants counsel conceded to the jurisdiction of this Court to determine the application, a position also restated by the Learned State Attorney who represented the Respondents. The applicants also submitted that the offences for which the applicants were facing are bailable, a matter which was not disputed by the counsel for the respondents either. Another issue which was also not challenged in any way by the respondents was the applicants counsel assertion that bail is a right of an accused person grounded on the presumption of innocence enshrined under Article 13(6)(b) of the United Republic of Tanzania Constitution and also made reference to a holding in the case of Patel vs. Rep. (1971) HCD 391 where the Court restated this position by saying; "*that a man while waiting for trial is entitled to bail under the principle of innocence until proven guilty*".

The applicants also alluded to the fact that all the applicants have available reliable sureties when called to by the Court to supply, if the Court so grants the prayers sought by the applicants, that is bail pending trial.

On the part of the respondents, they filed a counter affidavit, which they prayed the Court adopt so that it forms part of their submissions. The learned State Attorney for the Republic, alluded to the fact that they did not object to the bail sought by the applicants, based on two issues, first, was the fact that this Court has jurisdiction to entertain and determine the application bearing in mind the fact that the charges are against economic offences and the valued of the charged property is above ten million shillings.

Second, was the fact that the offence charged isailable and the pending case is yet to undergo trial nor is there a certificate issued by the Director of Public Prosecutions conferring jurisdiction on the RM's Court where the case is at, to try the charges against the applicants. The learned State Attorney also prayed that where the Court decides to exercise its jurisdiction and grants bail to the applicants, the provisions of section 36(5) and (6) of the Economic and Organized Control Act, Cap 200 RE 2002 should guide the Court when determining conditions to impose.

The rejoinder advanced by the learned Advocate for the Applicants was very brief, only praying that the prayers sought be granted and the applicants be released on bail pending trial.

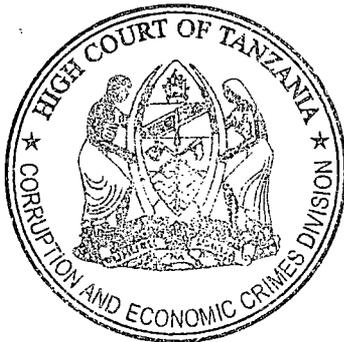
We premise by concurring with the counsels for the applicants and the respondents that, having regard to the offences charged against the applicants being economic offences and the fact that the charged property value is above ten million shillings, without doubt the jurisdiction to hear and determine the application rests on this Court. This is because apart from the reasons submitted by the counsels for applicants and respondents, there is the fact that the application before the Court we find to be competent by virtue of the provisions cited to move the Court which we find to be proper.

The fact that the offences charged against the applicants are economic offence and bailable have not been challenged. We have also considered the fact that the Respondent Republic have not registered any objection to the prayers sought by the applicants. Understanding that the discretion to grant the application lies on this Court, which is expected to exercise this discretion judiciously. Having found no reason before us to refrain from considering the prayers sought by the applicants, We therefore proceed to grant the prayers sought and henceforth MUSTAFA MOHAMED BAKARI @KONDO (1st applicant), SALUM JUMA WAKILI (2nd applicant) and SHABAN JUMA HAJI (3rd applicant) are HEREBY ADMITTED TO BAIL upon fulfillment of the following conditions:

1. Each applicant to deposit cash Tshs. 5,076,925/- (considering the value of the property charged and the principle of sharing) or immovable property of equal value to the amount ordered to be deposited.

2. Each applicant to provide two reliable sureties who are to execute a bond of Tshs. 1,500,000/- each and satisfy the Court on having residency in the area within the jurisdiction of this Court. Sureties have to be either employees of the Government or possess a national identify card issued by NIDA.
3. The applicants not to leave the jurisdiction of this Court without permission from the Resident Magistrate, Resident Magistrates Court of Dar es Salaam Region, at Kisutu.
4. The applicants to surrender their passport and any other travelling documents to the Resident Magistrate, Resident Magistrates Court of Dar es Salaam Region, at Kisutu.
5. The applicant to Report to the Regional Crimes Officer Dar es Salaam according to a schedule to be prescribed by the RCO Dar es Salaam.
6. Verification of the sureties and bond documents shall be executed by a Resident Magistrate, Resident Magistrates Court of Dar es Salaam Region, at Kisutu.

Ordered.



Winfrida B. Korosso

Judge

15th October 2018