

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

MISC. ECONOMIC CAUSE NO. 56 OF 2018

(Arising From Economic Crime Case No. 6 of 2018, Resident Magistrate's Court
of Dar es Salaam Region at Kisutu)

DAFROZA MECHOIR @ RWE GASIRA

VERSUS

REPUBLIC

RULING

22/10 & 23/10/2018

Korosso, J.

This Ruling relates to an application before the Court filed under a certificate of urgency by the above named applicant, Dafroza Melchior @Rwegasira, through chamber summons supported by an affidavit sworn by the applicant herself. The application is made pursuant to sections 29(4)(d) and 36(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2002. Relief sought is for the applicant to be granted bail pending hearing of Economic Case No. 6 of 2018, at Resident Magistrate's Court of Dar es Salaam at Kisutu. The Court has taken judicial notice of the case number in view of a copy of the charge sheet appendaged to the affidavit despite the fact that the chamber summons and contents of the affidavit especially wrong cited information on the case pending at the RM's Court as Economic Cause No. 6 of 2018 instead of the correct citation, that is Economic Crime Case No. 6 of 2018.

From the records before the Court in Economic Crime Case No. 6 of 2018, the applicant is the 3rd accused person charged with two other accused persons. The charges against the applicant are that; in the first count, unlawful Possession of Government Trophy contrary to section 86(1) and (2)9c(ii) and Part 1 of the First Schedule to the Wildlife Conservation act, No. 5 of 2009 read together with paragraph 14(d) of the First Schedule to, and Sections 57(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2002. Where it is alleged that the applicant and two others, were found in possession of 3 pieces of elephant tusks valued at USD 15,000.0 equivalent to Tshs 34,275,000/-. Second count is Leading organized Crime contrary to paragraph 4(1)(a) of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, particulars being that the applicant and two others, intentionally organized and furthered the objectives of a criminal racket by acquiring and possessing Government trophies, that is ow pieces of elephant tusks valued at USD 15000.0 equivalent to TShs. 34,275,000/-.

The applications main thrust is grounded on submissions related to the supposedly challenging health of the applicant, which it is alleged was caused by mistreatment by police officers upon being arrested and while in custody, a fact fervently denied by the respondents, seeking for proof of the said allegations. The applicants counsel in his submissions, conceded to the jurisdiction of this Court to hear and determine the application and the fact that grant of bail lies upon the discretion of this Court. The applicant also submitted where the Court grants bail as prayed he will fulfill all the conditions

imposed by the Court. The applicants also implored the Court to be guided by relevant legal provisions guiding determination of similar applications and to consider the fact that bail is a right and the offences charged against the applicant are bailable.

On the part of the Respondents, they filed a counter affidavit which they prayed should be adopted and form part of their submissions. The counter affidavit averments put the applicant to strict proof on allegations of mistreatment while under restraint which led to poor health of the applicant. The respondents also concurred with the submissions by the applicants counsel on the jurisdiction of this Court to hear and determine the application and to the fact that the offence charged against the applicant is bailable. The respondents through the learned State Attorney, submitted that they had no objection to the application but implored the Court, if it so decides to grant the prayers for bail, to be guided by the provision of section 36(5) of the EOCCA, when imposing conditions for bail. The applicant's rejoinder was brief and effectively a reiteration of the submissions in chief.

We have considered all the submissions and evidence before the Court explicated by the counsels for the applicant and the respondents and having examined the provisions cited to move the Court to hear and determine this application, we are satisfied that they are proper and therefore the application is competent. We also concur with both the applicants and the respondents that bearing in mind the charges against the applicant which are economic offences, and the fact that the value of the charged property is above ten

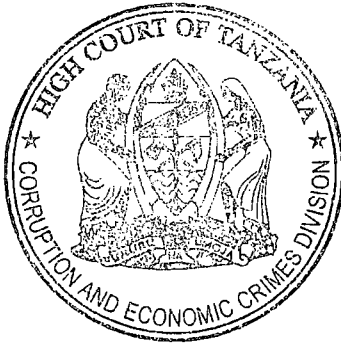
million shillings, and the stage for which the pending case against the applicant is at, not having been committed, that it is this Court that is vested with jurisdiction to determine the application.

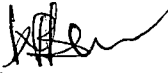
The offences charged against the accused person are bailable, and there being no objection on the part of the respondents, which we believe means they have no fear of availability of the applicant when she will be required to attend hearings. The applicant has also assured this Court to comply and fulfill all conditions imposed by the Court. Taking into account all these factors, we find no reason to deny the prayers sought by the applicant. Consequently, DAFROZA MELCHIOR @RWE GASIRA, is Admitted to bail subject to the following conditions;

1. The applicant to deposit cash Tshs. 5,713,000/- (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. The applicant to provide two reliable sureties who are to execute a bond of Tshs. 1,000,000/- 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 applicant 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 applicant 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
23rd October 2018