

**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. 51 OF 2018**

(Originating from Economic Crime Cause No. 68 of 2018  
At Kisutu RM's Court Dar es salaam)

**HASSAN MGAZA CHOMOKA @ DINGI.....APPLICANT**

Versus

**THE REPUBLIC.....RESPONDENT**

**RULING**

Date of last order: 30/10/2018

Date of Ruling 31/10/2018

**Mashaka, J.**

This Ruling is in respect of the bail application brought by the applicant Hassan Mgaza Chomoka @ Dingi who is represented by Mr. Alfred Shanyangi, Advocate while Mr. Candid Nasua, State Attorney assisted by Ms. Narindwa Sekimanga, State Attorney represented the respondent Republic.

In support of the application, Learned Counsel Shanyangi for the applicant submitted that this being an application made under Section 29(4)(d) and Section 36(1) of the EOCCA, Cap 200 R.E 2002 prays for this Hon. Court to be pleased to grant bail to the applicant pending trial determination of the Economic Crime Case No. 68 of 2018 which is pending

before the RM's Court of Dar es Salaam at Kisutu and any other reliefs or orders the Court may deem just and fit to grant. He prayed this Hon. Court to adopt the contents of affidavit to form part of his submission. That the applicant who is an accused person was arrested on the 18/08/2017 at Bahari Beach area within Kinondoni Municipality in Dar es Salaam, he was interrogated and arraigned in Court. The applicant stands charged under the Economic and Organised Crime Control Act (hereinafter referred as the EOCCA), Cap 200 R.E 2002 and the Wildlife Conservation Act No. 5 of 2009 in Economic Crime Case No. 68 of 2018 at the RM's Court of Dar es Salaam at Kisutu. He stands charged with one count of unlawful possession of government trophies as indicated in annexure ADS 01 to affidavit.

Learned Counsel further submitted that pursuant to the foregoing the accused person who is the applicant could not enter any plea and therefore the bail application could not be determined at that stage because the value of the government trophies exceeds ten million shillings. That this Court is vested with jurisdiction to hear and determine the same. That the applicant is a citizen of Tanzania and has no crime record. The offence which he stands charged is bailable and the applicant guarantees to be available at all stages before the determination of the offences he stands charged at the trial court. Learned Counsel guarantees that the applicant will adhere to the conditions this Hon. Court may deem fit to impose.

Learned Counsel contended that the applicant who is an accused person is of good character and he is ready to cooperate with the investigation agencies where necessary such as the Police and Task Forces.

That the applicant has reliable sureties, and undertakes to be bound with reasonable conditions and terms.

Learned Counsel argued that the offence the applicant stands charged, the RM's Court of Dar es Salaam has no jurisdiction to try the same unless the DPP files a certificate to confer jurisdiction. In the prevailing circumstances, no certificate has been filed and the applicant continues to remain in remand prison up to date. It is his humble prayer that the applicant be grant bail and this Hon. Court be pleased to impose reasonable conditions to allow or grant bail to the applicant while awaiting the determination of the offences, he stands charged as he is still innocent unless otherwise he is proven guilty, as stipulated under Article 13(6)(b) of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time. Learned Counsel referred the Court to the decision held in the case of **Peter vs. Republic (1971) HCD 391**, where Biron J (as he then was) held "*that a man whilst awaiting trial is as of right entitled to bail as there is presumption of innocence unless the contrary is proved*". Also, he referred the case of **Daud Peter vs. Republic (1979) TLR 22**, the Court held that "*bail is a right and not a privilege*". In this respect, with the reasons advanced and cited authorities, Learned Counsel prayed that the applicant be considered and this Court be pleased to impose reasonable conditions and grant bail.

In reply, Learned State Attorney for the respondent prayed for this Hon. Court to adopt counter affidavit which was filed in Court as per the Court orders. That there is no dispute this application has been moved by Section 29(4)(d) and Section 36(1) of the EOCCA, Cap 200 R.E 2002. At this juncture this Hon. Court has jurisdiction to entertain this matter and it is in

the discretion of this Hon. Court to grant bail to the applicant or not. Learned State Attorney submitted that the Hon. Court has the duty to determine the reliability of the sureties when granting bail to the applicant. Furthermore, when the Hon. Court dispenses its duty, should consider the provisions of Section 36(5) of the EOCCA, it provides for the conditions to be imposed by the Hon. Court when admitting bail to the applicant.

That since the DPP has not filed any certificate against grant of bail to the applicant, Learned State Attorney submitted that the Hon. Court be guided by the provisions of the law as cited earlier, when granting bail to the applicant.

Learned Counsel Shanyangi for the applicant prayed to reiterate submission in chief.

Having considered the submissions by both parties before the Court, and the fact that this bail application has conferred jurisdiction to this Court to determine the application, also the fact that the involved government trophies property of the United Republic of Tanzania is above ten million shillings therefore, there is no question on the jurisdiction of this Court to entertain the matter at hand. I am also satisfied that the application before the Court is competent having regard to the cited provisions to move this Court under section 29(4)(d) and 36(1) of the EOCCA, Cap 200 RE 2002.

Moreover, the offence charged against the applicant is bailable in terms of the Act. It is also true that bail is a right as submitted by both Learned Counsel for the applicant and also observed in the case of **HASSAN OTHMAN HASSAN@ HASANOO vs REPUBLIC, Criminal Appeal No**

**193 of 2014** that, " *..guided by the principle that an accused person is presumed innocent until proved guilty and the purpose of granting bail to an accused person is to let him enjoy his freedom so long as he does not default appearances in court when so required until his rights are determined in the criminal case...*" This right may only be denied where there are justifiable reasons to do so but this Court has not been availed any reason warranting refusal of bail to the applicant.

The alleged value of the government trophies is more than ten million shillings hence the applicability of Section 36(5)(a) of Cap 200 RE 2002, which provides that; "*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 to half the value be paid and the rest be secured by execution of a bond.*" The applicant is required by this provision to deposit half of the value.

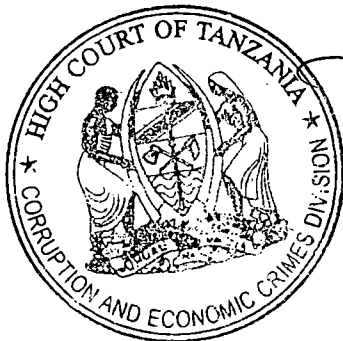
Consequently, the applicant one **HASSAN MGAZA CHOMOKA @ DINGI** is hereby admitted to bail subject to fulfilling the following conditions:

1. The applicant to deposit cash **Tshs. 17,137,500/=** being half of the alleged amount of USD 15,000 which is equivalent to Tshs. 34,275,000/-. **Alternatively**, the applicant to deposit title deed of any immovable property of value not less than **Tshs. 17,137,500/=**. The immovable property must be free from any encumbrances and the title deed shall be approved by the Registrar of Titles or any other recognized person acting on behalf and must be accompanied by a valuation report from the Government valuer. If the property has no

title deed, then shall have approval from the local authorities of the place where the property is located.

2. The applicant must provide two reliable sureties who are to execute a bond of Tshs. 5,000,000/- each. One of the two sureties must be employed in the service of the Government of United Republic of Tanzania or private institution and the other must be a reputable person in the society.
3. The applicant not to leave the jurisdiction of this Court without permission from the Resident Magistrate in Charge at the Resident Magistrate's Court of Dar es Salaam at Kisutu.
4. If in possession, the applicant must surrender all travelling documents including passports to the Regional Crimes Officer (RCO) of Dar es Salaam Police Special Zone.
5. The applicant to report once every month to the RCO DSM Police Special Zone or upon a schedule provided by the said RCO.
6. The applicant should appear before the court on the specified date and time as scheduled by the Resident Magistrate at the Resident Magistrate's Court of Dar es Salaam at Kisutu.
7. Verification of sureties and bond documents for the applicant shall be approved by the Resident Magistrate in Charge at the Resident Magistrate's Court of Dar es Salaam at Kisutu, before the applicant is released on bail.

It is so ordered.



**L. L. Mashaka**  
**JUDGE**  
**31/10/2018**