

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

CORRUPTION AND ECONOMIC CRIMES DIVISION

AT DAR ES SALAAM

MISC. ECONOMIC CAUSE NO. 57 OF 2018

(Originating from Economic Crime Case No. 06 of 2018 of the Resident
Magistrate's Court of PWANI at Kibaha)

MARIJAN S/O HAMIS MAFTAH APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

R U L I N G

Date of Last Order: - 26/10/2018

Date of Ruling: - 29/10/2018

L.L. MASHAKA, J

Before the Court is an application for bail filed by the applicant Marijan s/o Hamis Maftah pending trial of Economic Crimes Case No. 6 of 2018 in the Resident Magistrate's Court of Pwani at Kibaha. The application was made by way of chamber summons under section 29(4)(d) and section 36(1) of the Economic and Organised Crime Control Act (herein referred to as the EOCCA), Cap 200 R.E 2002 as amended by Act No. 3 of 2016. The application was supported by affidavit deposed by Marijan s/o Hamis Maftah, the applicant. The applicant prays to be admitted to bail pending trial and any

other orders this court deems proper to grant. The respondent upon being served the application filed counter affidavit on the 22/10/2018.

Learned Counsel for the applicant submitted that the application is made under Section 29(4)(d) of and Section 36(1) of the EOCCA, Cap 200 R.E 2002 and prayed to adopt affidavit deposed by the applicant.

That on the 11/05/2018, the applicant was arraigned before the RM's Court of Pwani at Kibaha and charged with two counts of unlawful possession of government trophies c/s 86(1)(2)(b) and (3) of the Wildlife Conservation Act No. 5 of 2009 as amended by Act No. 4 of 2016 read together with paragraph 14 of the First Schedule to and Section 57(1) of the EOCCA, Cap 200 R.E 2002 as amended by Act No. 3 of 2016; the said charge sheet is attached with this application. At the RM's Court of Pwani at Kibaha, the Court informed the applicant accused that the Court cannot grant bail as the Court had no jurisdiction due to the value of the government trophy to wit one lion tooth being Tshs. 11,140,150/=, the property of the United Republic of Tanzania, hence bail cannot be granted. Therefore the applicant is before this Hon. Court to pray for bail.

As submitted earlier, the application is brought under Section 29(4)(d) together with Section 36(1) of Cap 200 R.E 2002, that this Court has the mandate and jurisdiction to grant bail to the applicant and DPP has not filed consent for the subordinate court to hear and determine the criminal case. The criminal case facing the applicant is Economic Crime Case No. 06 of 2018 pending at the RM's Court of Pwani at Kibaha.

Learned Counsel further contended that the respondent in counter affidavit at paragraph 4 has not object to this bail application and averred that it is the discretion of the Court to consider granting bail to the applicant.

Learned State Attorney for the respondent submitted that they were served the chamber summons and affidavit of the applicant and they filed counter affidavit on the 22/10/2018. She prayed to the Court that counter affidavit form part of their submission. In principle the respondent does not object to the bail application. That it is true the applicant accused stands charged with a bailable offence and this Court has the jurisdiction to grant bail. As averred at paragraph 6 of counter affidavit, Learned State Attorney contended that the applicant is charged with a serious offence as it involves the killing of wildlife in our national parks and conservation areas, hence cause our economy, but withdrew this part of her submission.

Learned State Attorney submitted further that the seriousness of the offence which the applicant stands charged with is proved, he faces a severe punishment which includes long custodial sentence as indicated under Section 86(1) and (2)(b) of the Wildlife Conservation Act No. 5 of 2009. Therefore, prayed the Court be guided by the provisions of Section 36(1) of EOCCA Cap 200, R.E 2002, when granting bail to the applicant.

In rejoinder, Learned Counsel Magoti for the applicant submitted he heard Learned State Attorney for the respondent that basically they do not object bail being granted to the applicant. That she raised the offences are serious taking into consideration the severe punishment and argued that these were mere allegations, which have not been proved and should not be

used to deny the applicant bail. The Court should not punish the applicant before the allegations are proved to the contrary.

It is undisputed fact that the offence facing the applicant is a bailable offence under the governing laws, and the value of the government trophy to wit a lion tooth the applicant was found in unlawful possession is Tshs. **11,140,150/=** which is above ten million shillings as provided under section 29(4)(d) of the EOCCA. Having being satisfied, the Court is properly moved by virtue of the cited provisions of section 36(1) and section 29(4)(d) of the EOCCA. Basically, the respondent did not object the grant of bail to the applicant.

Bail is a constitutional right and not a privilege. In the case of **DPP vs Bashiri Waziri and Mugesu Anthony, Criminal Appeal No 168 of 2012**, the Court defined bail as; *"a mechanism designed to ensure that a person who is subject to the strictures of the law stays out of confinement while the process of inquiry into his/her liability in the criminal process is being investigated, or if he has been charged in a court of law, his/her personal freedom is guaranteed before the end of the trial through him/her furnishing security as part of, the undertaking to turn up whenever called up. The institution of bail, therefore, falls on the positive side of the principle of presumption of innocence which we all cherish. As we remarked earlier, this principle can only be derogated from on public policy, and only when the public policy is backed by clear provisions of the law"*. Hence the applicant has a right to bail.

The alleged value of the government trophy is more than ten million shillings hence the applicability of Section 36(5)(a) of Cap 200 RE 2002,

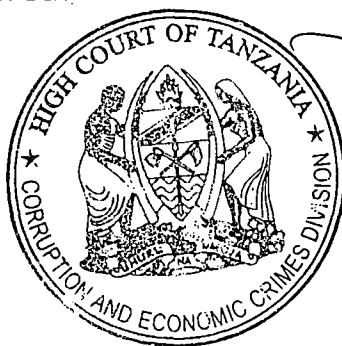
which provides that; "execution of a bond to pay such sum of money as is commensurate to the monetary value and the gravity of the offence concerned: Provided that where the offence for which the person is charged involves property whose value is ten million shillings or more, the court shall require that cash deposit to half the value be paid and the rest be secured by execution of a bond."


Consequently, this Court finds no reason not to exercise its discretion, the applicant MARIJAN s/o HAMIS MAFTAH is hereby admitted to bail subject to fulfilling the following conditions: -

- 1) The applicant must deposit in cash Tshs. **5,570,075/=**, which is half of Tshs. **11,140,150/=**. **Alternatively**, the applicant to deposit title deed of any immovable property of value not less than Tshs. **5,570,075 /**=. 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. 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 furnish two reliable sureties who are to execute a bond of Tshs. 2,000,000/= each. One of the sureties must be employed in the Government of the United Republic of Tanzania or recognized private institution and the other must be a reputable person in the society.
- 3) The applicant should not leave the jurisdiction of this court without permission of the Resident Magistrate in Charge of Pwani at Kibaha.

- 4) If the applicant has in possession, to surrender passport or other travelling documents to the Regional Crimes Officer of Pwani Regional Police.
- 5) The applicant must report once every month to the Regional Crimes Officer of Pwani Regional Police or according to a schedule to be provided by the said RCO.
- 6) The applicant should appear before the court on the specific time and dates as scheduled by the Resident Magistrate of the RM's Court of Pwani at Kibaha.
- 7) Verification of sureties and bond documents shall be approved by the Resident Magistrate in Charge of the Resident Magistrate's Court of Pwani at Kibaha, before the applicant is released on bail.

So ordered.




L. L. Mashaka
JUDGE
29/10/2018