

IN THE HIGH COURT OF TANZANIA
THE CORRUPTION AND ECONOMIC CRIMES DIVISION
DAR-ES-SALAAM SUB-REGISTRY
AT DAR-ES-SALAAM

MISC. ECONOMIC CAUSE NO. 31 OF 2018

(Originating from Economic Crime Case No.14/2018

RM'S Court of Kisutu Dar es Salaam)

SULTAN ALLY YUSUPH.....APPLICANT

Versus

THE REPUBLICRESPONDENT

R U L I N G

24/7 & 25/7/2018

MATOGOLO, J.

The applicant Sultan Ally Yusuph, on 02/3/2017 was brought in the Court of Resident Magistrate of Dar es salam at Kisutu charged with two counts under the Forest Act, No.14/2012. It was alleged that he was found unlawfully transporting forest produce, that is 1100 pieces of Mangrove fire woods and 7 bags of charcoal valued at Tshs. 12,000,000/= the property of the Government of the United Republic of Tanzania without any transit permit. Through his advocate Lilian Apolinary Nyambibo, he has filed this application for bail. The application is by chamber summons made under Section 29(4)(d) and Section 36(1) of the Economic and organized crime control Act, [Cap.200 RE-2002](the Act)

The same is accompanied by an affidavit of the applicants himself.

The respondent was served with the relevant bail documents and filed counter affidavit taken by Tully James Helela – State Attorney. At the

hearing, the applicant was represented by Lilian Apolinary learned advocate, while Mr. Candid Nassua learned State Attorney appeared for the respondent.

Mr. Candid Nassua essentially did not object the application for bail provided that the applicant has cited proper provisions and this Court has jurisdiction to entertain the application. He only prayed to this Court while setting conditions for bail to be guided by Section 36(5) and (6) of the Act.

In support of the application, Lilian Apolinary, learned advocate submitted that the applicant is charged with two offences under the Forest Act. That as the value of the involved property exceeds ten million shillings, the Court of Resident Magistrate Kisutu could not grant the applicant bail because it has no jurisdiction. The applicant was not even asked to enter plea. It is for those reason they have filed the application to this Court. She said the charged offences are bailable, thus the applicant has the right to bail and this Court has discretion to grant him bail. The learned advocate submitted that the right to bail draws its genesis from the principle of presumption of innocence provided under Article 13(6)(b) of the United Republic of Tanzania Constitution. She therefore argued that denial of bail would be infringement of the constitutional right and cited the case of **Patel V. Republic (1971)HCD 391**, in which it was held that a man while waiting trial is entitled to bail under the presumption of innocence until the contrary is proved.

She said, the applicant has reliable sureties and he is willing to comply with all bail conditions which this Court will set. That the applicant has never been charged in any criminal offence.

The learned advocate prayed therefore that the applicant be released on bail.

Having heard what the learned advocate for the applicant has submitted in support of the applicant, and after hear from Mr. Candid Nassua learned State Attorney, who essentially did not object the application, there is no doubt that the applicant is entitled to bail. The provisions which the applicant has cited are proper enabling provisions. There is no any other reason advanced justifying denial of bail to the applicant. As the charged offence is bailable, the application is hereby granted. The applicant may be released on bail upon fulfilling the following conditions:-

- 1) As the value of the property involved in the alleged committed offence exceeds ten million Shillings, the applicant shall deposit half of that amount, that is Tshs. 6,000,000/=.

In the alternative, the applicant shall deposit Title Deed of immovable property of value not less than Tshs. 6,000,000/=, or any other acceptable form of evidence of ownership of that immovable property from the local authority of the area where the property is located. The immovable property should be free from any encumbrances whatsoever.

- 2) The applicant shall furnish two reliable sureties. Each of the sureties shall sign a bond of Tshs. 1,500,000/=.
- 3) The applicant shall not leave jurisdiction of the Court of Resident Magistrate Kisumu without permission from the Resident Magistrate incharge of Kisumu Resident Magistrate Court.

- 4) The applicant shall make sure that he will continue to attend to his case on every scheduled date without fail.
- 5) The Resident Magistrate incharge of the Court of Resident Magistrate Kisutu shall approve the sureties and all bail documents before the applicant is released on bail.

Ordered accordingly.




F.N. Matogolo
JUDGE
25/7/2018

Date: 25/07/2018

Coram: F.N. Matogolo

For Applicant: Lilian Apolinary – advocate

Applicant: Present

Respondent: Mr. Constantine Kakula – State Attorney

B/Clerk: Farida Suphiani

Mr. Constantine Kakula – State Attorney

My Lord I appear for the respondent. The case is for ruling we are ready.

Court:

Ruling delivered today the 25th day of July, 2018 in the presence of the applicant and in the presence of Lilian Apolinary learned advocate and in the presence of Constantine Kakula learned State Attorney.




F.N. Matogolo
JUDGE
25/7/2018