

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM REGISTRY)

AT DAR ES SALAAM

MISC. CRIM.APPLICATION NO. 199 OF 2021

IKE GEOFFREY @MARIKI.....1ST

APPLICANT

ABDI MUSA @ HAMDI.....2ND

APPLICANT

VERSUS

THE

REPUBLIC.....RESPONDENT

(Arising from Economic Crime Case No. 56 of 2020, at the Resident Magistrate's Court of Dar es Salaam at Kisutu)

Date of last order: 24/9/2021

Date of Ruling:2021

RULING

E.I. LALTAIKA, J.

The applicants **IKE GEOFFREY @MARKI** and **ABDI MUSA @HAMADI** are moving this court for bail consideration pending

trial at the Resident Magistrate's Court of Dar es Salaam at Kisutu, in Economic case No.56 of 2020.

The applicants are charged with a total of seven counts to which , on the 1st count the applicants are jointly charged with Leading to organized crime contrary to paragraph 4(1) (a) of the First Schedule to the Act and section 57(1) and 60(2) of the Economic and Organized Crime Control Act, Cap 200 R.E. as for the second count, the 1st applicant is charged with forgery contrary to section 333, 335(a) and 337 of the Penal Code, the 1st applicant is also charged with the 3rd count of personation contrary to section 369(1) and (2) of the Penal Code, and further with regard to the 4th count, the 1st applicant is charged with Occasioning loss to a specified authority contrary to paragraph 10 (1) of the First Schedule to and sections 57(1) and 60 (2) of the Economic and Organized Crimes Control Act, Cap 200, R.E.2019. On part of the 2nd applicant, he is charged with the 4th count of Fraudulent evasion of tax contrary to section 85 (1), (2) and (3) (c) of the Tax Administration Act No.1 of 20215. He is also charged with the 5th count of Failure to pay tax contrary to section 83 (a) of the Tax Administration Act and lastly the 6th count which is Occasioning loss to a specified authority contrary to paragraph 10 (1) of the first schedule to and sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act.

Accordingly, the applicants preferred this application under section 29(4) (d) of the Economic and Organized Crime Control Act. R.E. 2019, the application is made by Chamber Summons

and an affidavit sworn by Mr. Nehemia Nkoko, the learned counsel for the applicants.

The applicants pray for the following orders to be granted by this court;

- (i) That the 1st and 2nd applicants be granted bail pending trial.
- (ii) That the 1st and 2nd applicants have reliable sureties who are ready and willing to receive and adhere to all bail conditions which may be imposed.
- (iii) Incidental orders as may be necessary to grant.

When this matter was called for hearing on 24th September, 2021 Mr.Nehemia Nkoko the learned advocate appeared for the applicants whereas Ms.Cecilia Mkonongo, senior state attorney appeared for the respondent.

Mr.Nkoko addressing this court with regard to the application submitted that by first prayed for this court to adopt the contents of the affidavit as part of his submission. He stated that the respondent do not object the application since no counter affidavit filed to challenge the application.

Mr.Nkoko invited this court to be guided by the decision of **Lulu Victor Kayombo & Another vs Republic, Misc.Economic Application No.140 of 2021**, where the court while setting bail conditions stated;

“.....like any other court’s discretion, the discretion under section 148 (5) (e) has to be exercised judicially taking

into account inter alia the fact that in terms of Article 107A of the Constitution, judiciary and to be precise court is the authority with final decision in dispensation of justice. It an accused person is denied bail by the court for offences which are bailable, or if a court imposes harsh or unconditional bail conditions which cannot be fulfilled for those offences the accused will have no other forum where to reclaim his liberty.....”

Responding to the Mr.Nkoko’s submission Ms.Mkonongo submitted that the fact that the offences which the applicants are charged with are bailable, she has no objection with the application however she is of the opinion that the court should be guided by the mandatory provisions of section 36(5) of the EOCCA and not the dissenting opinion in the case of **Lulu Victor Kayombo & Another vs Republic, (supra)**.

In his brief rejoinder Mr.Nkoko reiterated to his submission in chief however he added that section 148 of the Criminal Procedure Act is in pari materia with 36(5)(a) of EOCCA hence the prevailing law should be the CPA.

I have dully considered the submissions by the learned counsels from both parties and the applicants’ affidavit, this matter being the economic case, the court when setting bail conditions is bound to consider to the provisions of section 36(5)(a) which provides;

(5) Where the Court decides to admit an accused person to bail, it shall impose the following conditions on the bail, namely-

(a) where the offence with which the person is charged involves actual money or property whose value exceeds ten million shillings unless that person deposits cash or other property equivalent to half the amount or value of actual money or property involved and the rest is secured by execution of a bond.

In the case of **Rajabu Chande Mkename vs Republic, Misc.Economic Crimes Appli.No.41/2019 [2020]TZHC 85 (12 Feb,2020)** www.tanzlii.org the court stated that;

“when bail conditions are considered by a competent court of law, bail is purely discretionary powers. In the present statutes and as discussed above, bail conditions are no longer discretionary powers of the court, rather statutory. The present statutes have ousted the jurisdiction of this court to determine bail conditions in accordance with the prevailing circumstances of each case. As rightly discussed hereinabove, bail conditions on economic cases are provided for under section 36 (5) & (6) of the Act as amended by the Written Laws (Misc. Amendments) Act No 3 of 2016, which amended section

36 (a) by deleting and substituting with new subsections as quoted''

The court went on to state that;

*''These preconditions especially under subsection (5) are mandatory, **the term used is "shall" meaning must be complied with.** The court has no discretion to depart from those statutory conditions for bail, but may add as provided for under subsection 6 of the section''*

From the above findings of this court I concede with Ms.Mkonongo submissions that in consideration of bail conditions for the applicants herein I am restrained by the provisions of section 36(5)(a) of the EOCCA in consideration of this application.

In doing so I have examined the charge sheet annexed to this application and I am of the considered view that with regard to 4th count, 5th count, 6th count and 7th count are the same for both applicants. I hereby apply the principle of burden sharing of the principal sum for both applicants.

I therefore admit the applicants on bail upon fulfilling the following conditions;

1. The applicants or any other person who is a resident of Dar es Salaam City, on their behalf should submit cash bond at the sum of Tsh. 1,427,038,167.5= alternatively to submit the title deed(s) carrying the immovable property valued at that sum.

2. Each applicant should bring two sureties who are resident of Dar es Salaam City, who will execute a promissory bond of Tshs. 10,000,000/=
3. The applicants to surrender his travel documents to court.
4. The applicant should not leave the jurisdiction of the court without permission from the Resident Magistrate of the Resident Magistrate Court of Dar es Salaam.

The applicant to appear before the Deputy Registrar for execution of the bail conditions.

E.I. LALTAIKA

JUDGE

.....2021