

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 213 OF 2019

(Originating from Economic Case No.67 of 2019 in the Resident Magistrate's Court of Morogoro at Morogoro).

WAZIRI EDWARD MZINGA.....1ST APPLICANT
OSCAR CHRISTIAN MBUNDA.....2ND APPLICANT
FRANCCIS DAMAS TARIMO.....3RD APPLICANT
ROBERT ALEX RUBAYA.....4TH APPLICANT
MAJALIWA ROBERT ANDREW.....5TH APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Last Order: 13.12.2018

Date of Ruling: 19.12.2018

S. M. KALUNDE, J.

Through a chamber summons, the Applicants have moved the Court under section 29(4) (b) of the Economic and Organized Crimes Control Act [Cap. 200 R.E 2002] (EOCCA), supported by a joint affidavit of the applicants.

The respondents also filed a counter affidavit signed by Mr. Candid Nasua, State Attorney from the National Prosecution Services.

Essentially, they are seeking bail pending trial in Economic Case No. 67 of 2019 pending at the Resident Magistrate's Court of Morogoro at Morogoro where they have been charged with three counts. The first count is conspiracy to commit and offence contrary to section 384 of the Penal Code, [CAP. 16 R.E. 2002]; Second count leading organized crime contrary to paragraph 4(1) of the First Schedule to and section 57(1) of EOCCA; and the third count is cultivation of prohibited plants contrary to section 11(1) (a) and (2) of the Drugs Control and Enforcement Act, No.5 of 2015.

During hearing of the application the applicants enjoyed the services of Mr. Ignas Punge learned advocate and the respondent, the republic, was represented Mr. Candid Nasua, learned State Attorney.

In support of the application Mr. Punge prayed that the joint affidavit of the applicants be adopted and form part of their application. He further submitted that bail was a constitutional right as set out under Article 13(6) (b) on presumption of innocence and Article 15 (1) and (2) on individual liberty, of **the Constitution of the United Republic of Tanzania, 1977**. He submitted that, all the applicants were Public Servants and they were ready to meet the bail conditions as may be imposed by the Court. Mr. Nasua, for the respondent submitted that, the offences for which the applicants are charged in Economic Case No. 67 of 2019 were bailable and that the Court had discretion on whether to grant or not grant the application.

In principle, the objective of arrest and remanding the accused persons is designed to secure their attendance to face they day in court. On the other hand bail is designed to ensure that a person who is subject to the strictures of the law stays out of confinement and his freedom is guaranteed while an inquiry into his innocence or liability in criminal process is being investigated or determined. This is the foundation of

Articles 13 (6) (b) and 15 (1) and (2) of the Constitution. Also see the case of **Patel v R [1978] HCD.**

In granting bail, courts are guided by the nature of the offence, the amount involved, quality and independence of sureties and severity of the punishment are among factors to be considered. The rationale for this was set out in the case of **Alli Bahi vs. Rex TLR 1952** page 138 where the court held, *inter alia* that the requirement of the law as to the accused and his sureties' entering recognizances are merely a means to secure that end as far as possible. The theory being that the sureties, who stand to lose a considerable sum of money if the accused absconds, will see to it that he does not.

Mindful of the above legal position; and the fact that the respondent did not object the granting of bail to the applicant, noting that section 36 (5) (a) of EOCCA requires that an applicant to deposit cash or other property, equivalent to half the amount or value of actual money or property involved, I grant the orders sought. Since the offence for which the accused are charged with have the value of USD 15,000 equivalent to Tshs. 34,170,000.00. Applying the principle of sharing, each applicant would be required to either deposit cash or properties worth Tshs. 3,417,000.00.

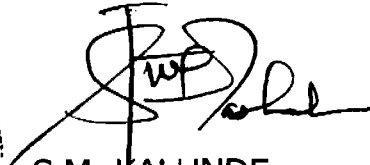
In the foregoing, I hereby grant bail to the applicants upon fulfilling the following conditions;

- (1). Each applicant shall deposit in the trial court a sum of Tshs. 3,417,000.00 in cash or in the alternative, he shall deposit to the

custody of the trial court, a title deed of an immovable property to the equivalent amount;

- (2). Each applicant should have two credible and reliable sureties; with fixed abode within the jurisdiction of the trial court;
- (3). Each of the two sureties shall execute a bail bond in the sum of Tshs. 1,708,500.00;
- (4). Each applicant shall immediately surrender his passport or any travelling documents in his name to Principal Resident Magistrate In Charge at Resident Magistrate's Court of Morogoro;
- (5). Each applicant shall be duty bound to appear in court on all dates that shall be scheduled by the court in Economic Case No.67 of 2019 pending before Resident Magistrate's Court of Morogoro at Morogoro;
- (6). Each applicant is hereby restricted to move outside the jurisdiction of the trial court without a prior permission of the Principal Resident Magistrate In Charge at Resident Magistrate's Court of Morogoro; and
- (7). Bail conditions to be ascertained/verified by the Magistrate at Resident Magistrate's Court of Morogoro assigned with the case.

DATED at DAR ES SALAAM this 19th day of December, 2019



S.M. KALUNDE

JUDGE

19/12/2019

Court: Ruling delivered in chambers in the presence of the counsel for the applicant Mr. Ignas Punge, learned advocate for the Applicants and Mr. Candid Nasua, State Attorney for Respondent.



S.M. KALUNDE

JUDGE

19/12/2019