

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MUSOMA**

**AT MUSOMA**

**MISC. CRIMINAL APPLICATION NO. 56 OF 2021**

**NYAGWISI CHARLES MARWA ..... 1<sup>ST</sup> APPLICANT**  
**EMMANUEL JOSEPH MRIAGA @ STAMINA ..... 2<sup>ND</sup> APPLICANT**  
**IDDI SHEKUWE ALLY ..... 3<sup>RD</sup> APPLICANT**  
**ERICK BARUGAHALE ELIUS ..... 4<sup>TH</sup> APPLICANT**

***VERSUS***

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

***(Application for bail pending trial from the proceedings of the District  
Court of Tarime at Tarime in Economic Case No. 46 of 2021)***

**RULING**

22<sup>th</sup> and 24<sup>th</sup> November, 2021

**KISANYA, J.:**

This is an application for bail pending trial. It is made by way of chamber summons preferred under section 29 (4) (d) and 36 (5) of the Economic and Organized Crimes Control Act [Cap 200, R.E 2019] (the EOCCA) and supported by an affidavit deposed by Juma David Mwita, learned advocate for the applicants.

The applicants, Nyagwisi Charles Marwa, Emmanuel Joseph Mriaga @Stamina, Idd Shekuwe Ally and Erick Barugahale Elius were arraigned before Tarime District Court in Economic Case No. 46 of 2021 for three counts namely, Leading Organized Crime Contrary to paragraph 4 (1) (a) of the First Schedule to, and sections 57 (1) and 60 (2) of the EOCCA; Unauthorized Possession of Minerals Contrary to section 18 (1) and (4) of the Mining Act No. 14 of 2010

read together with paragraph 27 of the first schedule to, and sections 57 (1) and 60 (2) to the EOCCA; and Stealing Contrary to sections 258 (1) and 265 of the Penal Code, [Cap 16, R.E 2019].

In terms of the charge sheet appended to the supporting affidavit, the properties involved in the second and third counts are 81.20 kilograms of stones containing minerals to wit; 1244.15 grams and 192.74 grams of Silver minerals all valued at TZS 163,946, 945.25. Therefore, the applicants were forced to lodge the present application for bail pending trial before this Court. Upon being served, the respondent/ Republic did not file a counter-affidavit to contest the application.

During the hearing of this application, Mr. Juma David Mwita, learned advocate appeared for the applicants whereas, the respondent had the services of Mr. Yese Temba, learned State Attorney.

At the outset Mr. Mwita prayed to adopt the chamber summons and supporting affidavit as part of his submission. He submitted further that the applicants are entitled to bail pending trial. His submission was premised on the grounds as follows: One, that the applicants are presumed not guilty and had a right to freedom of movement as enshrined under Articles 13(6) (a) and 17 of the Constitution of the United Republic of Tanzania, 1977, respectively. Two, that the offence levelled against the applicants are bailable. He fortified his submission by citing the case of **Hussein Juma @ Mzuzu and 14 Others**,

Criminal Application No. 29 of 2020, HCT at Musoma (unreported). The learned counsel submitted further that the applicants have reliable sureties and that they are ready to comply with the bail conditions.

In response, Mr. Temba informed the Court that the Republic was not contesting the application.

I have considered the chamber summons, supporting affidavit, submissions made by the parties and the law. The starting point is the provision of section 29(4) (d) of the EOCCA. It empowers this Court to hear bail application where the value of the property involved in the offence charged is ten million shillings or more. It is apt to note here that, this Court may exercise the said power, at any stage before commencement of the trial before the High Court Economic and Corruption Division. Therefore, having considered that the value of minerals involved in the offences laid against the applicants is TZS 163,946,945.25, I am satisfied that this Court is vested with the power to hear and determine the present application.

Some of the factors considered in determining include, gravity of the offence and severity of the offence, security of the accused, protection of victim, preservation of public order to mention but a few. Further to this, the main consideration is whether the accused will be available when the case is called on for trial or judgment.

In the instant case, the applicants undertake to comply with the bail conditions. It was also stated that they have reliable sureties who will ensure they are readily available during the trial. I have considered further that the Republic did not contest the application. Thus, nothing suggesting that the applicants might interfere with the investigation or commit other crimes. Having considered further that bail is a constitutional right and that the applicants are entitled to the right to freedom of movement, I find no cogent reasons of refusing this application.

Next for consideration is the conditions to be imposed. This matter is taken care by section 36 (4) and (5) of the EOCCA. The applicants, are among others, required to pay cash or deposit to court, the security whose value is at least half of the value of the property and the rest executed by promissory bond. Since the pending case involves more than one accused, the position set out in the case of **Silvester Hillu Dawi & Stephen Leons Mwambene vs The Director of Public Prosecutions**, Criminal Appeal No. 250 of 2006, CAT at DSM (Unreported) is to the effect that the amount of money or property required to be deposited for bail purposes is shared equally among the accused.

In view thereof, I order that Nyagwisi Charles Marwa, Emmanuel Joseph Mriaga @Stamina, Idd Shekuwe Ally and Erick Barugahale Elius be admitted on bail pending trial on the following conditions:

1. Each applicant shall not travel outside Mara Region without prior approval of the District Resident Magistrate of the District Court of Tarime.

2. Each applicant shall deposit a sum of TZS. 20,493,368.15 or deposit to the custody of the Court, a title deed or evidence satisfactorily to prove existence of an immovable property valued at TZS. 20,493,368.15625.
3. Each applicant should have two reliable sureties with fixed abode within Tarime District.
4. Each surety shall execute a bail bond of the sum of TZS. 10,246,684.078128.
5. Each surety shall produce an introductory letter from his or her employer or local authorities and a copy of recognized identity card.
6. Each applicant shall surrender his passport or any travelling documents (if any).
7. Verification of the sureties, bond documents and compliance with the bail conditions shall be executed by the District Resident Magistrate assigned with the case at the District Court of Tarime.

It is so ordered.

DATED at MUSOMA this 24<sup>th</sup> day of November, 2021.



  
E.S Kisanya  
JUDGE