

IN THE HIGH COURT OF TANZANIA
DARE ES SALAM DISTRICT REGISTRY

AT DAR ES SALAAM

CRIMINAL APPLICATION NO. 230 OF 2019
(Originating from Economic Crimes Case No. 4 of 2019 in the
Resident Magistrate's Court of Kibaha at Kibaha)

SULTAN ALLY YUSUPHAPPELLANT

AND

THE REPUBLICRESPONDENT

RULING

18th and 20th December, 2019

Kisanya, J.

This application for bail pending trial has been filed by applicant namely, Sultan Ally Yusuph. He is the accused person in Economic Crime Case No. 4 of 2019 pending in the Resident Magistrate's Court of Kibaha at Kibaha. The pending case involves two counts. The first count is **unlawful transporting forest produce** contrary to section 89(b) of the Forest Act, 2002 as amended and Regulation 13(1)(4) and (5) of the Forest Regulations read together with paragraph 33 of the First Schedule to, and Section 57(1) and 60(2) of the Economic and Organized Crime Control Act, (Cap. 200 R.E. 2002).

The second count is **unlawful transporting forest produce** contrary to section 89(b) of the Forest Act, 2002 as amended and Regulation 13(1)(4) and (5) of the Forest Regulations read together with paragraph 33 of the First Schedule to, and Section 57(1) and 60(2) of the Economic and Organized Crime Control Act, (Cap. 200 R.E. 2002).

Both counts involve forest produce to wit ~~1,100~~ 1,100 pieces of Mangrove (*rhizophra mancronata firegoods*) and 70 bags of charcoal valued Tanzania shillings Twelve Million and One Thousand (Tshs. 12,100,000) the property of the Government of Tanzania. Since the value of money involved exceeds ten million shillings, the applicant has applied for this Court to grant him bail pending trial.

His application is made under sections 29(4) and 36(1) of the Economic and Organised Crimes Control Act, [Cap. 200 R.E.2002] as amended, Sections 148(3) and 392A of the Criminal Procedure Act (Cap 20 R.E. 2002) as amended. The application is made at the instance of *N&L Attorneys* and is supported by affidavit of his counsel one Lilian Appolinary Nyambibo, learned advocate.

At the hearing, the applicant was not present but represented by his counsel one Ms Lilian Appolinary Nyambibo, learned advocate. On the other side, Ms Upendo Mono, learned State Attorney appeared for the Republic.

In his oral submission before this Court, the learned advocate adopted the grounds averred in the affidavit in support of the

application. She argued that the applicant is as of right entitled on the basis of presumption of innocence principle which is enshrined in Article 13(6)(b) of the Constitution of the United Republic of Tanzania. The learned advocate supported her argument with the case of **Patel vs R (1971) HCD No. 391** and urged me to grant bail.

The respondent filed an affidavit to object bail application on the ground that there is possibility that the applicant when granted bail will not appear during trial. In her oral submission, the learned State argued that the applicant has not advanced reasons for this Court to grant him bail. However, the learned State Attorney conceded that the offences in the matter at hand are bailable and that bail is a right to the accused. In her rejoinder, the counsel for the applicant argued the ground that applicant will jump bail lacks basis.

I am in agreement with both learned counsels that bail is a right to the accused person. Granting bail is based on the principle of presumption innocence and the right to ^{personal} freedom of movement which are treasured under Articles 13(6) (b) and 15 of the Constitution. In the case of **Patel vs R**. [*supra*] cited by the counsel for the applicant, this Court emphasized on the status of the accused during trial and held as follows:

“...whilst awaiting trial is as of right entitled to bail, as there is presumption of innocence until contrary proved...”

It a settled law that the purpose of arrest and putting the accused in custody is to secure his attendance during the trial and to ensure that he is available to receive and serve sentence if convicted.

I am aware that a court with competent jurisdiction has discretion of granting bail depending on the nature of each case, nature of offence and amount of money involved. The primary consideration in granting bail is interest of justice to the accused and the complainant. It follows that if bail is not restricted by the law, its denial need to be justified. An objection to granting bail should not be based on mere allegations or presumption. It is a fact which need to be proved before the Court as held in the case of **Adballah Nassoro vs Republic**, 1 TLR (R) 289 that;

“whether the granting of the application will be detrimental to interest of justice and good order....But such detriment must satisfactorily substantiated by solid reason and not based on vague fears or apprehensions or suspicions. And bail should not be lightly refused.”

In the present application, the applicant is charged with bailable offences. The Respondent objection to bail application is extracted in paragraph 6 of the counter-affidavit which reads as follows:

“That, according to the nature of offence there is a possibility that the applicant when granted bail will not appear”.

However, there is no evidence tendered before this Court to prove the stated “possibility”. In absence of such proof, this Court is of the considered view that the objection by the Respondent is based on elusive fears or suspicions. The Applicant states that he has reliable sureties who will ensure his availability during trial. For the aforesaid reasons, the objection cannot stand.

That said and as pointed out herein, the question whether to

grant bail depends on the circumstance of each case. The applicant in the case hand is charged with offences related to forests produce. I understand that it is a public interest to protect forests and other natural resources which are heritage of this Nation. Failure to protect forests may cause environment degradation and endanger economy and national security. In such a case therefore, bail conditions must ensure availability of the accused during trial to face the charges accordingly. There is no evidence adduced to show that the applicant is likely to commit the same offence if granted bail.

The applicant being charged with an economic offence, bail conditions are prescribed under section 36 of the Economic and Organized Crime Control Act [Cap 200 R.E 2002]. This provision requires the applicant to pay cash bond or submit to court the security whose value is at least half of the value of the property or money involved. The rest value is required to be executed by bond.

In the circumstance, the application for bail pending trial is hereby granted. I accordingly admit the applicant to bail upon complying with the following conditions:

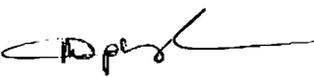
1. The applicant to surrender his passport or any travelling documents, if any to the Resident Magistrate's Court of Kibaha at Kibaha;
2. Applicant should not travel outside Pwani Region without prior approval of the Resident Magistrate's Court of Kibaha at Kibaha.

3. The applicant shall deposit before the Court cash or title deed of an immovable property valued at Tshs. 6,050,000.
4. Applicant should have two reliable sureties and with fixed abode within the jurisdiction of the trial Court;
5. Each surety should produce an introductory letter from his or her employer or local authorities and a copy of recognized identity card.
6. Each surety shall execute a bail bond in the sum of Tshs. 1, 500,000/=;
7. The applicant to report to the Resident Magistrate's Court of Kibaha at Kibaha once every month preferably, the last Friday;
8. Applicant shall appear in court on all dates the case is pending before Kibaha Resident Magistrate's Court; and
9. The above bail conditions shall be supervised and sureties certified by the Magistrate assigned with the case at the Resident Magistrate's Court of Kibaha at Kibaha.

It is so ordered.

DATED at DAR ES SALAAM this 20th day of December, 2019.




E.S. Kisanya
JUDGE