

**IN THE HIGH COURT OF TANZANIA
AT SUMBAWANGA**

MISC CRIMINAL APPLICATION No 46 OF 2020

PASCHAL S/O LAZARO @MACHEMBE.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Originating from Mpanda District Court in Economic Crime Case No 10 of 2020)

RULING

18th – 26th November, 2020

MRANGO, J.

PASCHAL S/O LAZARO @MACHEMBE is an applicant in this application (henceforth the applicant). He has lodged this application under **section 29(4) (d) of the Economic and Organized Crime Control Act. [Cap. 200 R.E 2002]** (henceforth EOCCA) and supported by an affidavit sworn by his advocate seeking for bail pending trial of Economic Case No 10 of 2020 of the District court of Mpanda at Mpanda on terms and conditions as this court may deem necessary and any other order this Court shall deem fit and proper so to grant.

When the application was called on for hearing, the applicant was present and represented by his advocate Loth Joseph Mwampagama and Mr. Fadhili Mwandoloma, the learned Senior state attorney appeared for the Republic.

In supporting application, Mr. Loth Joseph Mwampagama – Advocate, prayed that the application before this court is made under **section 29(4) (d) of the EOCCA** and asked the court to grant bail to the applicant on the condition the court deem fit pending hearing and final determination of the Economic Crime Case No 10 of 2020 which pending at the District Court of Mpanda at Mpanda.

He added that the affidavit deponed on behalf of the applicant under his instruction, the amount involved in his case is USD 15,000/= equal to Tsh. 34,734,000/= of which the trial court has no jurisdiction to grant bail. Also he said that the applicant is entitled to bail as constitutional right as per the case of **DPP Versus Daudi Pete 1993 TLR 22.**

In response Mr. Fadhili Mwandoloma the learned Senior State Attorney, has supported the application by the applicant, and added that the court has to consider the amount involved of which is Tshs 34,734,000/= and the applicant is Hutu so the sureties should be reliable persons.

I have gone through this court's records and the respective submissions by both parties. The question for determination is whether or not this application has merit. Or I may ask myself whether or not under the circumstances of this case, the applicant is entitled to the bail.

Right from the outset, it should be understood that, in cases of this nature, the Court in consideration of application is expected to exercise its discretion judiciously taking into consideration all important factors relating to grant bail. The discretionary powers involved in the process of granting or refusing bail is a process in which the court in free, wise and independent to consider the relevant laws, principles, rules and all circumstances surrounding the case at hand to reach at the right decision that guarantees a proper and just end of the course of justice.

Having considered the affidavit and oral submissions made by both learned counsels before this court, and bearing in the mind the fact the offence is bailable as also conceded by both parties, and being convinced that there are enough safeguards to ensure the availability of applicant/accused person at the date set for hearing of the case, i find that the applicant is entitled to the prayed bail. In the premises, It is accordingly ordered that bail be granted to **Paschal S/O Lazaro @Machembe** (applicant) as prayed.

Having granted bail to the applicant, next to consider is what conditions and terms on bail this court has to impose. The law mandatorily imposes conditions in cases where the applicant is charged with the offence(s) the property subject matter of the charge is **ten**

million shillings or more. The conditions are clearly provided for under Sections **36 (5) and 36(6) of EOCCA.**

Section 35(5) of EOCCA reads thus;

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

- a) Execution of a bond to pay such sum of money as commensurate to the monetary value and gravity of the offence concerned: provided that where the offence for which the person is charged involves property whose value is ten million shillings or more, the court shall require that cash deposit equal to half the value be paid and the rest be secured by the execution of bond;*
- b) Appearance by the accused before the Court on specific date at specific time and place;*
- c) Surrender by the accused to the police of his passport or any other travel document; and*
- d) Restriction of the movement of the accused to the area of the town, village or other area of residence."*

And **Section 36(6) of the EOCCA** also reads thus;

"The Court may, in addition to the mandatory conditions prescribed in subsection (5) impose any one or more of the following conditions, namely-

- a) Requiring the accused to report at specific interval to a police station or other authority in his area of residence;*

- b) *Requiring the accused to abstain from visiting a particular locality or premises, or association with certain specified persons;*
- c) *Any other condition which the Court may deem fit to impose in addition to the preceding condition, which appear to the Court to be likely to result in the appearance of the accused for the trial or resumed trial at the time and place required or as may be necessary in the interest of justice or the prevention of crime"*

The above provisions are very clear, unambiguous and with no room left for misinterpretation and what **Section 36(5) of the EOCCA** provides that where the value of the property subject matter of the charge is ten million shillings or above as the case before me *"the court shall require that cash deposit equal to half the value be paid and be secured by execution of bond."* The value of the property in this case is Tshs. 34,734,000/=)

Therefore, I accordingly set bail conditions as hereunder:-

- 1) That, the applicant to deposit **Tshs. 17,367,000/=** being the half amount of the value of the property subject matter of the charge **[(Tshs. 34,734,000/= ÷ 2) = 17,367,000/=]**

Alternatively, the applicant has to deposit title deed of any immovable property of value not less than Tshs. **17,367,000/=** the immovable property must be free from any encumbrances and

the title deed shall be approved by the Registrar of Titles or any other recognized person acting on behalf, if the property has no title deed, then shall approval from the local authorities of the place where the said property is located.

- 2) That, the applicant to provide one reliable surety who is required to execute a bond of Tshs. 17,367,000/=,
- 3) That , the applicant not leave the jurisdiction of the District Court of Mpanda at Mpanda without its written permission,
- 4) That, the applicant shall appear before the District Court of Mpanda at Mpanda on a specified date, time and place , without failure,
- 5) That, the applicant shall surrender the passport or any other travel document to the Mpanda Central Police if any and,
- 6) That, the Resident Magistrate In charge of the Resident Magistrate Court of Katavi at Mpanda to verify all bond documents and surety presented by the applicant in fulfillment of the conditions set herein.

It is so ordered.




D. E. MRANGO

JUDGE

26.11.2020

Date - 26.11.2020
Coram - Hon. D.E. Mrango – J.
Applicant - Present & represented by
Mr. Loth Mwampagama – Adv.
Respondent - Ms. Irene Mwabeza – SA.
B/C - Mr. A.K. Sichilima – SRMA

COURT: Ruling delivered today the 26th day of November, 2020 in
presence of the Applicant, Mr. Loth Mwampagama -
Learned Advocate and Ms. Irene Mwabeza – Learned State
Attorney for the Respondent/Republic

Right of appeal explained.




D.E. MRANGO
JUDGE
26.11.2020