

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA.

MISC. CRIMINAL APPLICATION NO. 10 OF 2021

(Originating from Economic crime case No.04 of 2021, in the District Court of Mlele at Mlele)

EMMANUEL S/O ALBERTO@ MSURUZYA APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

Date of last order: 20th October, 2021

Date of Ruling: 9th November, 2021

NDUNGURU, J.

This is a ruling on application for bail pending trial in an Economic Case No. 04 of 2021 before the District Court of Mlele at Mlele. The applicant in this matter is Emmanuel s/o Alberto@ Msuruzya. The applicant has moved this court by way of Chamber summons supported by affidavit duly sworn by the applicant himself. This application is made under sections 29(4) (d)

and 36(1) of the Economic and Organized Crimes Control Act (Cap 200 R.E 2019).

Essentially, the affidavit deponed as herein: that the applicant is charged before the District court of Mlele at Mlele with offence of Unlawful possession of Government Trophy contrary to section 86(1) and (2) (c) (ii) of the Wildlife Conservation Act No 5 of 2009 read together with paragraph 14 of the first schedule to and section 57(1) and 60 (2) of the Economic and Organized Crimes Control Act, (Cap 200 R.E 2019). The value of the subject of the case is **35,000,000/=** the amount is above the value which the subordinate court can entertain bail.

The applicants further averred that the subordinate court has no jurisdiction to entertain bail due to the value of the trophy involved in this case. It is this court with powers to grant bail. He is also ready to abide with bail conditions imposed to him.

Initially, the respondent/Republic had not objected bail through counter affidavit. When the application was called upon for hearing, the applicant appeared in person unrepresented. On the other hand Mr. John Kabengula, learned State Attorney represented the respondent/ Republic. When given

opportunity to submit for his application, the applicant being a layman just prayed his application be granted. Further, prayed the court to impose affordable conditions.

In his submission, learned senior State Attorney had no objection to the application. He said the court has jurisdiction to entertain the application and is properly moved. The learned State Attorney urged the court to adhere to the requirement of section 36(4) c and (5) of the Act (Cap 200) when imposing bail conditions.

The following positions of the law are not disputed by the parties: that, offence with which the applicant is charged is bailable. This court, and not the lower court, has jurisdiction to entertain bail applications of this nature (where the value of the subject matter is ten million shillings and above). This position was also supported by the Court of Appeal of Tanzania (CAT) in the case of **Director of Public Prosecution v. Aneth John Makame, Criminal Appeal No. 127 of 2018, CAT at Dar es Salaam** (unreported). The stance of the law was further underscored by this court (my brother Mallaba, J as he then was) in **Salim s/o Majaliwa @ Mbengwa and 4 others v. Republic, Criminal Application No. 228 of 2018, High court of Tanzania (HCT) at Tabora** (unreported).

It is also a clear position of our law that, bail is both a statutory and constitutional right for an accused person. The purpose of granting bail to an accused person is to let him enjoy his freedom as long as he shall appear in court for his trial; see **Hassan Othman Hassan @ Hassanoo v. Republic, Criminal Appeal No. 193 of 2014, CAT at Dar es salaam** (unreported). In that stance there is no reasonable ground for denying bail to the applicant in the matter at hand. It is more so considering the fact that, his application is not objected by the respondent/Republic.

A question that arises here is this; which amount of cash (or property valued at which tune) that the applicant will be required to deposit if granted bail? As the applicant stand charged alone, he cannot benefit from "the Principle of sharing". This principle was promulgated by the CAT in the case of **Silvester Hillu Dawi and another v. DPP, Criminal Appeal No. 250 of 2006, CAT, at Dar es Salaam** (unreported). It guides that, where more than one person are charged with an offence of the nature mentioned above, then the amount to be deposited as bail condition should be shared among the accused persons for purposes of bail. The law require the applicant to deposit half of the amount value of the subject matter.

It follows thus that, by simple arithmetic, half of the amount involved in the charge sheet (i.e. Tshs. 35, 000,000/= mentioned above) is **Tshs. 17,500,000/=** (seventeen million, five Hundred thousand only.) Due to the above reasons, I find that, the applicant is entitled to the prayed bail. I accordingly, grant bail to the applicants on the following conditions which are mandatory as per section 36 (5) (a)-(d) of the EOCCA:

(a) That, the applicant shall deposit cash Tshs **17.500, 000/=** (seventeen million, five Hundred thousand only.) or property worth that sum. The applicant will have with two sureties (each) will sign bond at the like sum.

(b) The applicant' sureties must be residents of Katavi Region which is the geographical jurisdiction of the lower court.

(c) In case the applicant will opt to deposit immovable properties in compliance with the condition set above, it shall be sufficient for him to deposit title deeds accompanied with valuation reports. If the title deeds will not be available, he shall adduce sufficient evidence to prove that the respective

immovable properties actually exist; including valuation report showing the value of the properties.

(d) That, the applicant shall appear before the lower court on specified dates, time and place.

(e) He shall also surrender his respective passport or any other travel documents (if any) to the District Magistrate In charge of Mlele District Court, and

(f) He is restricted from travelling outside Katavi Region (being the territorial jurisdiction of the lower court), unless written leave is granted by the District court Magistrate In charge who will serve a copy of the said leave to the lower court. The sureties envisaged under the conditions of bail set above shall be approved by the District court Magistrate in charge court. It is so ordered.




D.B. NDUNGURU

JUDGE

9/11/2021