

TANZANIA / JUDGMENT

abdulilah ramadhan salmu and others vs republic 2021 tzhc 6219 24 september 2021

COURT
TZHCDECIDED
24 September 2021

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM REGISTRY) AT DAR ES SALAAM MISC.
CRIM. APPLICATION NO. 198 OF 2021 (Arising from Economic Crime Case No. 05 of 2021
pending before the District Court of Kibaha at Kibaha) ABDULILAH RAMADHAN @
SALMU..... 1st APPLICANT AGUSTINO MICHAEL KILAS @JUMA..... 2ND
APPLICANT AMAN NORBERT @ MICHAEL..... 3RD APPLICANT MASUMBUKO
JUMA MOHAMED @MARK 4TH APPLICANT VERSUS THE
REPUBLIC..... RESPONDENT

RULING

Last Order 15/9/2021 Ruling: 17/9/2021 MASABO J.L.- The application before me is for bail. Through a chamber summons preferred under section 29 (4) (d) and section 36 (1) of the Economic and Organized Crime Control Act, [Cap. 200 R.E 2019], the applicants pray for admission on bail pending trial in Economic Crime Case No. 05 of 2021 currently pending before the District Court of Kibaha at Kibaha. The application is supported by an affidavit taken by their counsel, one Alex Mshumbusi. It is also supported by a charge sheet from which it is discernible that, they are jointly charged of willfully and unlawfully destroying Standard Gauge Railway Infrastructure by cutting railway copper wire; being found in possession of 50 kgs of the copper wire the property Tanzania Railway Cooperation; and occasioning a pecuniary loss of Tshs 368,000,000/= to the Tanzania Railway 1 Cooperation contrary to sections 326(1) and (6A) and 312(1)(a) of the Penal Code and sections 57(1) and 60 (2) of the Economic and Organized Crime Control Act [Cap, 200 R.E 2002) (EOCCA). The application was not contested. The Respondent did not file a counter affidavit and when the parties appeared for hearing, Ms. Sofa Bimbiga, the learned State Attorney who appeared on behalf of the Respondent submitted that the Respondent does not intend to object the application but reminded the court to take into consideration the provision of section 36(5) and (6) of EOCCA when determining the conditions for bail. On his part, Mr. Alex Mshumbusi, the learned counsel for the applicants, having adopted the content of his affidavit, prayed that the application be allowed and the applicants be admitted on bail upon fair conditions. Having gone through the application, I am fortified that the application is well within the jurisdiction of this court because, pursuant to section 29(4)

- (a) and (d) of the Economic and Organized Crime Control Act (supra), the application for bail could not be entertained by the District Court of Kibaha as the pecuniary loss of Tshs 368,000,000/= alleged to have been occasioned by the applicants to the Tanzania Railway Corporation exceeds by far the amount of Tshs 10,000,000/= which is the pecuniary bar for subordinate courts in similar applications 2 Considering that the offences facing the applicants are bailable and the application is uncontested and considering further that, no reason has been furnished to this court warranting denial of bail to the applicants and there is no evidence that the applicants were previously granted bail but jumped it, I find no reason why this application should not be allowed. Accordingly, I allow it and order that the applicants be released on bail upon fulfillment of the following conditions:
1. Deposit in court a sum of Tshs.184,000,000/= which is one half of the pecuniary loss of Tshs 368,000,000/= occasioned to the Tanzania Railway Corporation. As the offences were allegedly committed by 4 persons, this amount shall be equally shared between the applicants whereby each of the applicant shall deposit Tshs. 46,000,000/= only. In the alternative, each of the applicant shall deposit a Title Deed of immovable property of the value not less than Tshs. 46,000,000/= or any other acceptable form of evidence of ownership of that immovable property from the local authority of the area where the property is located. The immovable property shall be within the jurisdiction of the Dar es Salaam Registry of the High Court and shall be free from encumbrances.
 2. The remaining half that is, Tshs.184,000,000/= shall be secured by each of the applicants signing a bond of Tshs Tshs. 46,000,000/=.
 3. The applicant must produce two (2) reliable sureties and each surety shall sign bail bond in the sum of 1,500,000/=. The sureties must be resident of Dar es Salaam or Coastal region with recognized place of 3 abode and must have National ID or letter of introduction from their local leaders;
 4. The applicants shall surrender their passport and other travel documents (if any);
 5. The applicants shall not leave Dar es Salaam and Coastal Regions without first obtaining permission from the Magistrate in charge of Kibaha District Court;
 6. The applicants shall continue to attend to this case on the date and time scheduled;
 7. The Resident Magistrate in charge of Kibaha District Court shall verify the sureties and all bail documents. Order accordingly. DATED at DAR ES SALAAM this 17th day of September 2021. 17/09/2021 X Signed by: J.L.MASABO J.L. MASABO JUDGE 4

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