

TANZANIA / JUDGMENT

adam said kawambwa vs republic

2021 tzhc 9187 20 august 2021

COURT
TZHCDECIDED
20 August 2021

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM
MISC. CRIM.APPLICATION NO. 155 OF 2021 ADAM SAID KAWAMBWA.....
APPLICANT VERSUS THE REPUBLIC..... RESPONDENT (Arising from
Economic Crime Case No. 18 of 2019, at the Resident Magistrate's Court of Dar es Salaam at Kisutu)
Date of last order: 13/8/2021 Date of Ruling: 20/8/2021

RULING

LALTAIKA, J. The applicant, ADAM SAID KAWAMBWA, is moving this court under certificate of urgency for bail consideration pending trial at the Resident Magistrate's Court of Dar es Salaam at Kisutu, in Economic case No.18 of 2019. The application is supported by chamber summons made under section 148(3) of the Criminal Procedure Act and section 36(1)(5) of the Economic and Organized Crime Control Act. R.E. 2019 as well as an affidavit sworn by Mkwikwini Robert, learned counsel for the applicant. i The applicant prays for the following orders to be granted by this court;

- (i) That this Honorable Court be pleased to admit the applicant to bail pending trial and determination of charges for unlawful possession of Government Trophies contrary to section 86(1) (2) (c) (ii) and (3)(b) of the Wildlife Conservation Act No.5 of 2009 reading together (Sic!) paragraph 14 of the First Schedule to and Sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, Cap 200 (ii) Any other relief or orders as this court may deem fit to grant. In the affidavit sworn by Mr. Robert on behalf of the applicant, it is stated that, on 11th February 2019 the applicant was arrested and charged with unlawful possession of Government Trophies contrary to section 86(1) (2) (c) (ii) and (3)(b) of the Wildlife Conservation Act No.5 of 2009 reading together (sic) paragraph 14 of the First Schedule to and Sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, Cap 200. Mr. Robert stated further that the applicant is a reliable person who is unlikely to jump bail or breach any condition if granted bail. The learned counsel went on to assert that, the applicant will be available every time as may be required to appear in court for trial. The respondent did not file any counter affidavit to challenge the application. When this matter was called for hearing on the 13th August, 2021 the applicant, Mr. Kawambwa appeared in person whereas Ms. Tully Helela, learned State Attorney appeared for the

respondent. On his 2 submission Mr. Kawambwa briefly submitted that he prays for this court to grant him bail following this bail application. In reply to the applicant's submission, Ms. Helela submitted that, the respondent had no objection to this application. However, she prayed for this court to set the bail conditions parallel to the provisions of section 36(5) and (6) of the Economic and Organized Crimes Act. I have duly considered the brief submissions by both parties. I have gone through the affidavit which forms a part of the applicant's submissions, which affidavit is uncontested by the respondent. In deciding the merit of this application, it is crystal clear that bail is a constitutional right as contended by the applicant. Nevertheless, such a right has to be exercised in accordance with the mandatory provisions of the law. This is to ensure that the person who is granted bail undertakes to be present from time to time when required to appear before the court (see the case of Jackson Matandu & Others vs Republic (Consolidated Misc.Economic Causes No. 08, 9 & 12 of 2018, [2018] TZHCED 30, of 04 July 2018, www.tanzlii.org Since the applicant is charged with offences under the Economic and Organized Crimes Control Act, I am inclined to set the bail conditions in compliance with the provisions of section 36(5) and (6) of the Economic and Organized Control Act, (Cap 200, R.E 2002) as I hereby do. A quick perusal of the copy of the charge sheet annexed to this application indicates that the subject matter involved in the offence in question is United States Dollars Four Hundred Sixty-Five Thousand (USD 465,000) which is equivalent to Tanzanian Shillings One Billion Eighty-One Million Three Hundred and Fifty-Seven Thousand Five Hundred Thousand only (TZS 1,081,357,500) /= the charge sheet also indicates that the applicant and one other are charged in the said economic case. To this end, the principle of burden sharing shall apply in these circumstances by dividing the amount of the subject matter involved by two. From the above reasons, I hereby admit the applicant on bail upon fulfilling the following conditions;

1. The applicant or any other person who is a resident of Dar es Salaam City, on his behalf should submit cash bond at the sum of Tsh. 540,678,750/= alternatively to submit a title deed(s) carrying the immovable property valued at that sum.
2. The applicant should bring two sureties who are residents of Dar es Salaam, who will execute a promissory bond of Tshs. 30,000,000/= each
3. The applicant to surrender his travel documents to court.
4. The applicant should not leave the jurisdiction without permission from the Resident Magistrate Court of Dar es Salaam. The applicant to appear before the Deputy Registrar for execution of the bail conditions. 20/8/2021 4

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