

TANZANIA / JUDGMENT

CRIMINAL APPLICATION FLORIAN MANASE

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1 January 2012

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB REGISTRY AT MUSOMA CRIMINAL
APPLICATION NO. 000033340 OF 2024 REFERENCE NUMBER 202411252000033340 (Arising from
Economic Case No. 31605 of 2024 at the District Court of Tarime) FLORIAN MANASE
RAPHAEL..... APPLICANT VERSUS
REPUBLIC..... RESPONDENT

RULING

11th & 19th December, 2024 M. L, KOMBA.: This is a ruling in respect of the application for bail by above mentioned applicant. The application was brought by way of chamber summons made under section 143(1) and (3) of the Criminal Procedure Act, Cap 20 R.E 2022 and 36 of the Economic and Organized Crime Control Act, Cap 200 R.E 2022 (EOCCA) while accompanied by affidavit of Ms. Mary Samson Advocate of the applicant. On 01st November 2024, the applicant was arraigned before the district court of Tarime to reply the complaint of the Republic, in Economic Case No. 31605 Page 1 of 7 of 2024, charged with unauthorized possession of minerals and stealing where the value of the gold as per charge sheet is TZS 1,090,363.37 Knowing bail is his constitutional right, applicant hired legal service of Advocate Mary Samson who appeared and submitted this application under certificate of urgency. Respondent, the Republic was represented by, Ms. Agma Haule. Ms. Samson submitted that the applicant is under custody in Tarime and she is praying for bail as per affidavit which she prayed to be adopted. She went on submitting that, the applicant is charged with two offences before Tarime District Court, one is unauthorized possession of mineral c/ s 18 (1) and (4) of the Mining Act Cap 123 and section 57 (1) and 60(2) of EOCCA. The offences are bailable, however, she noted and submitted that Section 57 of EOCCA provides when the person is charged the power to entertain the matter is vested to High Court while other courts need consent. She clarified that since the applicant was charged on 11 November, 2024 there is no consent filed at the District Court and therefore, applicant failed to obtain bail at District court and the only option is to file this application at this court because the trial Magistrate informed him that the court has no mandate to entertain bail application. Page 2 of 7 She registered her understanding on mandate of this court on entertaining bail in which the value involved is from TZS 300 million but she insisted that the law is silent if the subject is less than TZS 300 million. She prayed me to find this court has jurisdiction to entertain the

application and to issue conditions which applicant has to fulfill for him to be free waiting for trial while reminding that bail is right of accused and it is a constitutional right. State Attorney Agma Haule resisted application on the ground that it is District court which mandated to entertain application for bail of this nature as it appears in section 29 (4) (a) of EOCCA because the value is less than TZS 300 million. She went on clarifying that the District Court and Resident Magistrate Court has Jurisdiction to entertain bail in Economic Offences with specified threshold. So far as the valued of the item connected to case is less than TZS 300 million, she was bold in submitting that Tarime District Court has jurisdiction. Ms. Agma refer this court to its previous decision in Nyajirari Joseph @ Nyajirari vs Republic (Misc. Criminal Application 10 of 2021) [2021] TZHC 2074 at page 2 and 3 where it was found the District Court has jurisdiction to issue bail in a case of economic nature in which the amount is small. If the District court resisted to entertain bail Page 3 of 7 application as submitted by the counsel for applicant, Ms. Agma said the remedy for applicant was to file an appeal and not filing the fresh application. During rejoinder Ms. Samson reiterated her submission in chief. From the submission, the contests from the parties are not whether the offence is bailable or otherwise neither is it a right of applicant or not, learned minds contest on which court has mandate to entertain bail application of this nature. Counsel for applicant cited section 57 of the EOCCA which is to the effect that offences of the nature which applicant is charged is triable by the High Court that's why she was moved to file her application here. On the other side, State Attorney cited section 29 (4) that power to entertain bail is vested to District Court if the matter is waiting for trial as the current position of the applicant. For easy of reference the section reads; 29 (4) After the accused has been addressed as required by subsection (3), the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purposes of this section the power to hear bail applications and grant bail- fa) between the arrest and the committal of the accused for trial by the Court, is hereby vested in Page 4 of 7 the District Court and the court of a Resident Magistrate if the value of any property involved in the offence charged is less than three hundred million shillings;

- (b) after committal of the accused for trial but before commencement of the trial before the court, is hereby vested in the High Court;
- (c) From the counsel for applicant, the applicant was first arraigned to District court on 01 November 2024 and when applied for bail he was told the court has no jurisdiction. Ms. Samson believing this court has jurisdiction under section 57 of EOCCA of which it is true and she filed this application. However, the key word in that section 57 is "triable". High Court has mandate when the suit of this nature is ready for trial. In simplifying application of this nature and in making sure the justice is delivered timely and courts are accessible before the case is ready for full trial, legislature crafted section 29(4) that between arrest and committal, the district court has vested with jurisdiction to entertain bail issues. And that is the position of this court that district magistrate is allowed to entertain bail application before he commits the accused to remand that he has option to apply for bail as it is in section 29(4) and at paragraph (a) the law indicated Page 5 of 7 that at some threshold the District Court may proceed to entertain the bail application. Given the above position of the

law, it is obvious that district court and the court of a resident magistrate have jurisdiction to entertain an application for bail in economic cases where the value of the property involved, does not exceed TZS 300,000,000/=. In the instant case, the value of the property involved is TZS 1,090,363.37 which is below the threshold of the High Court to consider an application for bail. I, concur with Ms. Haule that in this case the district court and the court of a resident magistrate have jurisdiction to entertain an application for bail. ' * Given the above observation and basing on previous decision of this court in Nyajirari Joseph Nyajirari vs Republic (supra) I find that this application was wrongly filed in this Court and this Court has no jurisdiction to entertain an application for bail where the value of the property involved is less than TZS 300,000,000/=. In the upshot, having found that this Court has no jurisdiction to entertain this application, under section 372 of the Criminal Procedure Act, (Cap. 20 Page 6 of 7 R.E. 2022) I hereby strike out the application and direct the District Court of Tarime to entertain the application for bail in expeditious manner. It is ordered accordingly. VTEp at'MUSOMA this 19 day of December, 2024. M. L. KOMBA JUDGE Page 7 of 7

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Prepared on 14 October 2026 · Esheria