

TANZANIA / JUDGMENT

gisaba chombo and 4 others vs republic 2021 tzhc 6051 18 august 2021

COURT
TZHCDECIDED
18 August 2021

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISTRY OF SHINYANGA AT
SHINYANGA CONSOLIDATED MISC. CRIMINAL APPLICATIONS NOS. 15,16,17,18,19 OF 2021
GISABA CHOM BO..... I 1ST APPLICANT IAMES
PHIHO 2ND APPLICANT REBEKA
IUMA 3RD APPLICANT REHEMA MASUKA.. I II .. I .. I
I" I .. I" I I 4TH APPLICANT ELIAS LYALOBELA 5TH APPLICANT VERSUS REPUBLIC
RESPON DENT [Arising from Economic Crime Case No. 21/2021 from the District Court of Bariadi
at Bariadi.]

RULING

KULITA, 1.: This is a consolidated application for bail pending trial of the Applicants in EconomicCaseNo. 21 of 2021 in the District Court of Bariadi. According to the holding charge, the Applicants are charged with two counts to wit: stealing by servant contrary to the provisions of section 258(1)(2) (a) of the Penal Code, Cap 16 RE 2019 in the pt count. With 1 regard to the 2nd count, the Applicants are charged with Occasioning loss to a specified authority contrary to the provisions of section 284A(1)(2)(h) of the Penal Code, Cap 16 RE 2019 read together with Paragraph 38 of the pt schedule to and sections 57 (1) and 60 (2),(3) of the Economic and Organized Crime Control Act, Cap.200 R.E 2019. In all counts, it is alleged that, on 11th day of June, 2021, at Kinang'weli village within Itilima District, in Simiyu Region the Applicants being the employees of AMCOSdid steal or failed to discharge their duties in a reasonable manner that caused the AMCOS suffer a loss of Tshs. 37,912,000/=. To date, the Applicants have neither been committed to the Corruption and Economic Crimes Division of the High Court for trial, nor the Director of Public Prosecutions issued consent and certificate of transfer to confer jurisdiction to the District Court of Bariadi, hence the instant application for bail. This application is brought under the provisions of section 29(4)(d) of the Economic and Organized Crime Control Act and section 148(3)(5) of the Criminal Procedure Act Cap 20 RE 2019. It is supported by the affidavies of the Applicants, sworn on 12th of July, 2021. On 18th of August, 2021 this application came for hearing. The Applicants appeared in person whereas Mr. Nestory Mwenda, learned State Attorney appeared 2 for the Respondent, Republic. Before hearing commenced, as the Applicants' Applications in Criminal Applications No. 15, 16, 17, 18 and 19 all are of the same

nature and originate from the same Economic Case No. 21/2021 this Court made an order for Consolidation of the same into Criminal Application No. 15/2021. Submitting in support of the application the 1st Applicant in a nut shell stated that, their application originates from Economic Case No. 21/2021 of Bariadi District Court which was filed on 28th June, 2021. He added that, he prays for bail at this Court as the lower Court has no jurisdiction to grant bail on economic offence of occasioning loss to a specified authority. Lastly the 1st Applicant submitted that, he has reliable sureties and that he will attend the Court whenever is required to do so. The 2nd, 3rd, 4th and 5th Applicants had nothing different to add than subscribing to the 1st Applicant's submission and contending that bail is their right. In response, Mr. Mwenda from the outset declared that, they do not resist the applicants' applications for the reasons that the same are properly instituted at this Court under Section 29(4)(d) of the Economic and Organized Crime Control Act. With this he was of the considered views that this Court has jurisdiction to entertain the Applications. As thus, he 3 urged this Court to grant bail conditions in accordance with the requirement of the law. This is the end of both parties' submissions. I have taken into consideration both parties' submissions together with the available pleadings. The crucial issue for determination is, whether this Court has jurisdiction to grant the Applicants' application at hand? It is undisputed fact that, the applicants' holding charge states the value in all two counts to be Tsh. 37,912,000/=. Again, it is not in dispute that section 29(4)(d) of the Economic and Organized Crime Control Act Cap. 200 provides that the High Court has jurisdiction to determine bail when value of the subject matter is or above ten million shillings. I quote it bellow for easy of reference; - 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-

(a) . 4

(b) .

(c) .

(d) in all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court. As correctly submitted by Mr. Mwenda, I am also settled in my mind that, this Court has Jurisdiction to entertain the Applicants' applications. For that reason and on the bases that, the offences the Applicants are charged with are bailable, they as well have right of bail pending trial of their main case as per Article 15(2) of the Constitution of the United Republic of Tanzania, 1977 and so long as the Respondent, Republic does not oppose this Applicants' application, I accordingly grant this application. As the subject matter in question is valued at Tshs. 37,912,000/= and the number of accused persons/ Applicants is five, the rate of liability should be shared by all of them. Therefore, the liability for each accused person in monetary terms is that sum of Tshs. 37,912,000/= divided by 5 which gives to Tsh. 7,582,400/=. Section 36(5) and (6) of the Economic and Organized Crime Control Act requires the Accused persons/ Applicants 5 .,

- (b) .
- (c) .
- (d) in all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court: As correctly submitted by Mr. Mwenda, I am also settled in my mind that, this Court has Jurisdiction to entertain the Applicants' applications. For that reason and on the bases that, the offences the Applicants are charged with are bailable, they as well have right of bail pending trial of their main case as per Article 15(2) of the Constitution of the United Republic of Tanzania, 1977 and so long as the Respondent, Republic does not oppose this Applicants' application, I accordingly grant this application. As the subject matter in question is valued-at Tshs. 37,912,000/= and the number of accused persons/ Applicants is five, the rate of liability should be shared by all of them. Therefore, the liability-for each accused person in monetary terms is that sum of Tshs. 37,912,000/= divided by 5 which gives to Tsh. 7,582,400/=. Section 36(5) and;-t6) of the Economic and Organized Crime Control Act requires the Accused persons/ Applicants 5 or his surety to deposit cash monetary at least half of the value of the property (subject matter in question) or the title deed in alternative whose value is proved to be not less than that sum, and the rest half be executed by promissory bond. I thus proceed to direct the District Court of Bariadi to admit the Applicants to bail upon fulfilling the following conditions: -
- a) Each Applicant to deposit cash of Tshs. 3,791,209/- which is the half of each accused's liability In monetary terms. Alternatively surrendering to court a title deed of an immovable property whose value is equvalentto or exceeds the above-mentioned sum. Value of the property must be dully certified by the professional valuer.
- b) Each applicant to execute a promissory bond in the remaining sum of Tshs. 3,791,200/= with two sureties.
- c) Each Applicant to surrender the traveling document if any. It is so held and ordered accordingly. ~ S.M. Kulita JUDGE 18/08/2021 DATED at SHINYANGA this 18th day of August, 2021. 1iL S. M Kulita JUDGE 18/08/2021 ~V.6

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/224662/source_file/gisaba-chombo-and-4-others-vs-republic-2021-tzhc-6051-18-august-2021.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/gisaba-chombo-v-republic-bail-tzhc-2021>

Prepared on 14 October 2026 · Esheria