

TANZANIA / JUDGMENT

hamis hassan mkao vs ibrahim herieth liban 2023 tzhc 23330 14 december 2023

COURT
TZHCDECIDED
14 December 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM DISTRICT
REGISTRY AT DAR ES SALAAM MISC. CRIMINAL APPLICATION NO 39430 OF 2023 (Arising from
Economic case No. 51 of 2023 of the Court of Resident Magistrate of Dar es Salaam at Kisutu)
HAMIS HASSAN MKAO..... 1st APPLICANT IBRAHIM HERIETH LIBAN..... 2ND
APPLICANT VERSUS THE REPUBLIC RESPONDENT

RULING

14th Dec & 14th Dec, 2023 KIREKIANO, J The applicants herein work for the Prevention and Corruption Bureau (PCCB) SACCOS Limited; the first applicant is a board member loan committee while the second applicant is an accountant. Before the Court of Resident Magistrate of Dar es Salaam Region at Kisutu, the two i found themselves on the wrong foot, and in the company of themselves charged with 97 counts in Economic Case No. 51 of 2023. Briefly stated, in the first court, the two are charged with leading an Organised Crime contrary to paragraph 4 (1) (a) of the 1st Schedule to Section 57(1) and 60(2) of the Economic and Organised Crime Control Act (EOCCA). It is alleged that the two, on diverse dates between 12th September 2019 and 22nd August 2022 at Upanga area within Hala District in Dar es Salaam Region, intentionally organized a criminal racket, and fraudulently converted to their use Tanzanian Shillings Seven Hundred Ninety-three Million Nine Hundred Thirty Thousand Seven Hundred Ten Seventy-Five Cents (TZS 793,930,710.75), the property which was entrusted to them by PCCB Savings and Credit Cooperative Society Limited (PCCB SACCOS LIMITED). In the 97th count, it is alleged that the dual caused pecuniary loss of TZS. 793,930,710.75 to the specified authority; PCCB Savings and Credit Cooperative Society Limited (PCCB SACCOS LIMITED). The other 95 counts are economic-related offenses involving embezzlement, misappropriation, and computer-related fraud. Leaving the details behind, suffice to say here that, the amount involved in the charge is Tzs 793,930,710.75 and this amount is beyond 2 the powers of the Court of Resident Magistrate court to grant bail under Section 29 (4) (a) The Economic and Organized Crimes Control Act, Cap. 200. Under the certificate of urgency, the applicants through the service of Mr. Paul Elias learned advocate have brought this application seeking this court to grant them bail under section 29 (4) (d) and section 36 (1) of the Economic and Organized Crime Control Act, Cap. 200 [RE 2022] The application is supported by an affidavit of Mr Elias which is to the effect that the applicants have a

fixed place of abode in Dar es Salaam and have reliable sureties who can execute bond to secure and ensure their appearance in court whenever their case is called for hearing. It was also stated that the applicants have no previous records of jumping bail and hence the offense being bailable, it is in the interest of justice that this application be granted. The respondent Republic was represented by Mr. Kisima learned state attorney. He informed this court that the respondent is not contesting the application and hence did not file a counter affidavit. 3 During hearing of this application, Mr. Paul Elias learned advocate represented the applicants whereas the Republic was represented by Mr. Kisima assisted by Mr Imani Mitume learned state attorney. In his submission, Mr. Elias adopted his affidavit in support of the chamber summons and submitted that applicants are facing bailable offenses at the Court of Resident Magistrate at Kisutu. He said the amount involved in the charge is 793, 930, 710.75 which is beyond the powers of the Resident Magistrate Court to grant bail, that is value not exceeding Tshs 30,000,000. Mr Elias urged this court to exercise its powers under section 29 (4) (d) Economic and Organized Crime Control Act, Cap. 200 RE 2022, and grant the applicant's bail. He invited this court to consider similar circumstances as it was in the case of Fred Raphael Homo Vs Republic, Criminal Application No. 2/2016 <https://tanzlii.org/Tanzlii> that, when the offense is bailable the Court in consideration of such applications is expected to exercise its discretion judiciously taking into consideration all important factors relating to granting of bail. On the part of the respondent, Mr. Kisima having waived the respondent's right to file a counter affidavit he submitted on one aspect of the law that, if pleased to grant bail then when setting conditions and 4 terms of bail to the applicant this court should bear in mind the mandatory requirements as provided under section 36 (5) of the Economic and Organized Crime Control Act, Cap 200 [RE 2002] as amended by Act no 1 of 2022. It is clear that under section 29(4) (a) to (d) of the Economic and Organised Crime Control Act Cap 200 this court has the power to hear and determine bail applications depending on the value of the property involved in the offense charged. See Mwita Joseph Ikoh and Two Others versus The Republic, Criminal Appeal No.60 of 2018, CAT, at Mwanza. It is however noted that amendment of this section by Mise amendment Act no 1/2022 added the threshold from Tzs 10,000,000 to 300,000,000. I have considered the undisputed facts deponed in the applicant's affidavit and taken into consideration the submission by both parties. It is common knowledge that bail is a right to an accused person facing trial unless this right is restricted by law. In economic cases, one of the circumstances that may curtail bail is the provision of Section 36 (4) (a) to (e) of the Act. The circumstances include whether the accused had jumped bail before or has been convicted for three years or more. Having 5 considered the facts before me there are no facts posed which will curtail the applicant's bail. Given the above this application is merited. I have also taken into consideration section 36 (5) (a) of The Act as submitted by Mr. Kisima, the same is to the effect that the person granted bail should deposit cash or another property equivalent to half the amount or value of actual money or property involved and the rest should be secured by execution of a bond. The amount involved in the charge under scrutiny is 793,930,710.75/= and the applicants are two. This is to say, the same shall be shared by applicants (accused persons in the charge sheet) apiece which is to say Tzs 396,965,355/= for each accused. Following the above arithmetic, half of the same shall be deposited in terms of section 36 (5)(a) above while the rest should be secured by the sureties' bond. If upshot and the applicants are granted bail on the

following conditions:

1. Each applicant must deposit into court cash TZS 198,482,678/= or a Title Deed or proof of immovable properties having a certified value of TZS 198,482,678/= or more located in the Dar es Salaam Region. 6
2. Each applicant must secure two reliable sureties with a fixed place of abode within the Dar es Salaam region, each of whom shall sign a bond valued at TZS. 99,241,338.8.
3. The applicant should not leave the jurisdiction of the Resident Magistrate Court of Dar es Salaam, that is Dar Es Salaam Region without permission earlier sought from the Court of Resident Magistrate of Dar es Salaam at Kisutu.
4. Each applicant should surrender passport, and any other traveling documents (if any) to the Court of Resident Magistrate of Dar es Salaam at Kisutu.
5. The applicants are compulsorily bound to appear in the trial court at any time when so required until the final determination of Economic case No. 51 of 2023. Verification of bond documents and scrutiny of sureties shall be executed by the Resident Magistrate in Charge Court of Resident Magistrate of Dar 7 Court The ruling is delivered in the presence of the applicants and Mr Paul Elias Learned Advocate for the applicant and in the presence of Miss Florida Wenzeslaus assisted by Mr Imani Mitume learned state attorney for the Respondent and in the presence of Miss Monica Msuya Bench Clerk. A. JKIREKIANO JUDGE 14/12/2023 8

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