

TANZANIA / JUDGMENT

hassan kassimu mambunga china others vs republic 2016 tzhc 2202 11 april 2016

COURT
TZHCDECIDED
11 April 2016

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AT SONGEA MISCELLANEOUS CRIMINAL APPLICATION 08 OF 2016 (Arising from Economic Case 1A/2016 District Court of Songea at Songea) HASSAN KASSIMU MAMBUNGA @ CHINA 1st applicant HASSAN ALLY RASHID @ PUKA..... 2nd APPLICANT SHABANI ALENCE CHALAMILA @ SHABA. .3rd APPLICANT VERSUS THE REPUBLIC RESPONDENT

RULING

Last order: 11th day of April, 2016 Date of Ruling: 11th day of April ,2016 CHIKOYO , J. The applicants at Songea District Court stands charged of unlawful dealing in trophies contrary to section 84 (1) of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14 (d) of the first schedule and « « sections 57 (1) and 60 (2) of the Economic and Organized Crime Control Act Cap 200 R.E. 2002. The particulars of offence are to the effect that, the applicants on the month of September, 2015 within Namtumbo District in < V Ruvuma Region did sale four (4) pieces of Elephant Tusks valued at 64,800,000/= (sixty four million and eight hundred thousand shillings) to •I one Yahaya Nchimbi Ustadhi being the property of the Government of United Republic of Tanzania without having Trophy Dealers license previously sought and obtained from the Director of Wildlife. The applicants had filed the application of bail each of them under section 29 (4) (d) of the Economic and Organized Crime Control Act (Supra) praying for bail pending their case at the trial court. From the affirmed » i affidavit of all the applicants had interalia stated that, the offence against them is baible, they have reliable sureties, and they will attend the court without failure if granted the said bail. •j The applicants had filed their applications for bail before this court as the value of subject matter exceeds Tshs. 10,000,000/=. As the matter came today for hearing the applicants who were in person had basically submitted that their applications to be considered as they have reliable sureties. On the other hand Mr. Mwegole the learned State Attorney who appeared for the respondent had averred to the effect that, he has no objection on the applications made by the applicants as the offence isailable. That was the end of the submission from both sides the issue now is whether the applications has merit. This court is aware of the settled law under S.36 (4) (e) (5) (a - c) of •I •* Economic and Organized Crime Control Act (Supra) that there is a mandatory and additional bail terms, where this court could have set it for the applicants to be ordered to deposit to this court the half

amount of the value of subject matter which could be 32,400,000/= out of the total value of subject matter of 64,800,000/= where each applicant could be ordered to deposit the sum of Tshs. 10,800,000/= however I am afraid to order » S that following findings of the leading case »of Prof. Dr. Costa Rica Mahalu & Another Versus the Attorney General, Misc. Civil Cause No. 35 of 2007 High Court of Tanzania, Main Registry Dar es Salaam, where it was held the said provision to be unconstitutional as it is discriminatory. On those basis, I here find the application has merits, hence granted as prayed, and I proceed to set the bail terms as follows;

1. The applicant should sign a bail bond in sum of 4,000,000/= with two sureties each and each in the like sum.
2. The sureties should be proven residents of Ruvuma Region who < 4 possess movable or immovable properties worth not less than 4,000,000/= each situated within Ruvuma Region.
4
3. The applicants should each deposit cash Tshs. 2,000,000/= in this court.
4. The applicants should be reporting to the District Court at 08.00 hrs on the dates as scheduled by the said court until the finalization of <their case.
5. The applicants should surrender to this court the passport or any « ■* travelling documents in their possession.
6. The applicants should not travel outside Songea Region without prior written permission from the Resident Magistrate in Charge of Songea District Court. 'It is so ordered. 11/04/2016 COURT: Sureties to be approved by the Deputy Registrar. 11/04/2016 Ruling delivered in chambers in the presence of the applicants in * I person, Mr. Mwegole the Learned State Attorney for the responderat, and Mr. Komba Court Clerk, this 11th day of April, 2016.

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/hassan-kassimu-mambunga-china-v-the-republic-Unlawfuldealingintrophies-tzhc-2016--6a3ea5283b1caa91298209df

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