

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA BUKOBA SUB- REGISTRY AT
BUKOB A MISCELLANEOUS ECONOMIC APPLICATION NO. 10906 OF 2024 (Arising from
Economic Crime Case No. 10041 of2024 in Resident Magistrate's Court of Bukoba at Bukoba)
JACKSON KALIBAJUNA@KAIMU. APPLICANT VERSUS REPUBLIC....
RESPONDENT

RULING

29/04/202A 8.29/0A/2024 EL, NGIGWANA, J. The Applicants chamber application for bail is made under sections 29(4)

- (d) and 36 (1) of the Economic and Organized Crimes Control Act, [Cap, 200 R: E 2022] supported by the affidavit deposed by Wilson Edward Ogunde, learned advocate for the Applicant. The said affidavit gives the background and reasons for the application. As per paragraph 2 of the founding affidavit and the charge sheet forming part of it, the applicant is charged together with 12 others with three counts namely; Leading Organized Crime Contrary to paragraph 4 (l)(a) of the First Schedule to, and sections 57(1) and 60 (2) of the Organized Crime Control Act, [Cap. 200 R.E 2022] (EOCCA), receiving stolen properties contrary to section 311 of the Penal Code, [Cap 16 R.E 2022], 1 and causing loss to the specified authority contrary to paragraph 10 (1) of the First Schedule to, and sections 57(1) and 60 (2) of the Organized Crime Control Act, [Cap. 200 R.E 2022]. The value of the subject matter involved in the charges is TZS 377,000,000/= therefore, the Resident Magistrate's court has no mandate to grant bail hence this application. When the application was called on for hearing this 29th day of April, 2024, the applicant was advocated by Mr. Ibrahim Mswadick holding brief for Mr. Wilson Edward Ogunde with full instructions to proceed, while the Respondent/Republic was represented by Ms. Gloria Rugeye, learned State Attorney. The Respondent neither filed the counter affidavit nor contested the application. In his brief oral submission, Mr. Mswadick reiterated the reasons stated in the affidavit supporting the application while Ms. Gloria Rugeye urged the court to comply with the dictates of section 148 (5) (e) of the Criminal Procedure Act, [Cap. 20 R.E 2022]. Mr. Mswadick added that, considering the value of the subject matter involved in the chargers, the Resident Magistrates' court has no jurisdiction to grant bail. He added that the applicant is a trust worthy person and ready to abide to the bail conditions to be set by the court. 2 It is the clear

position of the law in our jurisdiction that bail is both a statutory and constitutional right for an accused unless there are express provisions of law or compelling reasons to deny the same. The rationale of granting bail to an accused person is to let him/her enjoy his/her freedom so long as he/she shall appear in court for his/her trial. See the case of Hassan Othman Hassn @Hasanoo versus Republic, Criminal Appeal No. 193 of 2014 CAT - DSM (unreported). In the instant application, since the applicant has been charged with a bailable offence, and that the application has not been contested by the Respondent/Republic, and since no compelling meritorious reasons for the court to decline the application, this application for bail pending trial (if any) of the Economic Case is meritorious. In Economic Crime Case No. 10041 of 2024, accused persons are 13 in number, thus the principle of "sharing" must come into play. See the case of Sylvester Hillu Dawi and another versus Director of Public Prosecutions (DPP), Criminal Appeal No. 250 of 2006 CAT (unreported). The principle guides that, where two or more persons are charged with an offence of the nature named herein above, then the amount to be deposited shall be shared among the accused persons for purposes of bail. 3 The law requires the applicant to deposit half of the amount value of the subject matter. It follows that, by simple arithmetic, half of the amount involved in the charge sheet, that is to say TZS. 377,000,000/= is TZS. 188,500,000/= . When such amount is divided to all 13 accused persons according to the above highlighted principle, each of them shall be required to deposit TZS. 14,500,000/= . In that premise, I grant bail to the applicant on the following conditions;

- (1) That, the applicant shall deposit cash TZS. 14,500,000/= or deposit to the custody of the court a Title deed or evidence satisfactorily to prove existence of an immovable property whose value is not less than TZS. 14,500,000/=. In case the applicant decides to deposit immovable property, the Title deed or evidence must be accompanied by valuation Report from the Government Valuer
- (2) The applicant must have two reliable sureties, each shall have national identity card and introduction letters from his/her respective local authority. (.3) Each surety shall execute bail bond in the sum of TZS. 7,250,000/=. 4
- (4) Applicant shall surrender his passport or any travelling document (if any) to the Resident Magistrate's Court of Bukoba at Bukoba
- (5) The Applicant shall not travel outside Kagera Region without approval or permission of the Resident Magistrate In-charge of the Resident Magistrates' Court of Bukoba at Bukoba.
- (6) Applicant shall appear before the Resident Magistrates' Court of Bukoba at Bukoba on every specified date and time.

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- (7) Verification of sureties and bond documents to be executed by Resident Magistrate in charge of the Resident Magistrate Court of Bukoba at Bukoba. It is so ordered. E.L. NGIGWANA JUDGE 29/04/2024 5 Ruling delivered this 29th day of April, 2024 in the presence of the applicant and Mr. Ibrahim Mswadick, Ms. Gloria Rugeye, learned State Attorney for the Respondent Republic, and Ms. Queen Koba, B/C. E.L. NGIGW JUDGE 29/04/2024 6
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