

TANZANIA / JUDGMENT

jackson matandu others vs republic

2018 tzhcced 30 4 july 2018

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IN THE HIGH COURT OF TANZANIA THE CORRUPTION AND ECONOMIC CRIMES DIVISION
IRINGA SUB-REGISTRY CONSOLIDATED MISC. ECONOMIC CAUSES NO. 8, 9 AND 12 OF 2018
(Originating from Iringa District Court in Economic Case No. 6 of 2018)

1. JACKSON MATANDU
2. PROF. JOHN FERDINANDI MACHIWA
3. JANE MPUYA
4. GODWIN GERSON MSHANA
5. PROF. PHILEMON MUSHI VERSUS REPUBLIC

RULING

We premise by providing a background to the matter to ease understanding of what is before the Court for determination. Before the Court three applications were filed, first there is, Misc. Economic Cause No. 8 of 2018, with one applicant Godwin Gerson Mshana (who is now the 4th applicant). The second application is Misc. Economic Cause No. 9 of 2018, with one applicant, Prof. Philemon Mushi who is now applicant No.5. The third application Misc. Economic Cause No. 12 of 2018 had three applicants, Jackson Matandu, Prof. John Ferdinand Machiwa and Jane Mpuya who are now the 1st, 2nd and 3rd applicants respectively. When the applications came for hearing, counsels for Godwin Gerson Mshana and Prof. Philemon Mushi, prayed to the Court that Misc. Economic Cause No. 8 and 9 be consolidated with Misc. Economic Cause No 12, so that as to have a joint hearing for all the three applications. This Court upon consideration of these prayers, and also acknowledging the fact that both of the applications emanate from a pending case at the Resident Magistrate Court of Iringa Region at Iringa, that is Economic Crime Case No. 6 of 2018, and also understanding from the charge sheets which were annexures to applicants supporting affidavit and supplementary affidavits respectively, that all the applicants face the same charges in the first count which is an economic offence, that is, Causing Pecuniary loss to a Specified Authority contrary to section 284A(1) (6) and (7) of the Penal Code, Cap 16 RE 2002 read together with Paragraph 38 of the First Schedule to, and Section 57(1) and 60(1) and (2) of the Economic and Organized Crimes Control Act, Cap 200 RE 2002, granted the prayer and ordered

for consolidation of the three Misc. Economic Causes (mentioned above) and proceeded to hear the application as one. During the hearing of the application, the Respondent Republic was represented by Mr. Mwenyeheri Aristolick, learned State Attorney and the 1st and 2nd Applicants were represented by Mr. Barnabas Nyalusi, learned Advocate. The 3rd and 5th Applicants were represented by Mr. Edmund Mkwata, learned Advocate and Mr. Jovin Ndungi appeared for the 3rd applicant. The applicants counsels submitted that the provisions cited to move the Court to hear and determine the application were section 29(4)(d) and 36(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2002, Section 148 (1),

- (2) and (3) of the Criminal Procedure Act, Cap 20 RE 2002 and Rule 6 of the Economic and Organized (Corruption and Economic Crimes Division) Rules, GN 267 of 2016. The cited provisions were not challenged by the Respondent Republic, and the Court upon consideration of the cited provisions finds that they are proper to move this Court and that they invariably also address the 2 competency of the applications and the jurisdiction of this Court to hear and determine the matter. There is no doubt therefore having regard to the cited provisions on the competency of the applications and also the fact that this Court is the one with jurisdiction to hear and determine the application. At the same time also considering that there is a pending case awaiting trial or committal at the Resident Magistrates Court of Iringa Region at Iringa, in line with the requirements of case law such as the holding in DPP vs Li iing Ling vs. Rep, Criminal Appeal No. 508 of 2015 (unreported) regarding the stage where this Court has jurisdiction in an appeal related to an economic offence. The applicants filed chamber summons and supporting affidavits. From the applicant's affidavits, they contended that they have available reliable sureties and will comply to all the conditions given by the Court if granted bail and also the fact that the offences for which the applicants are charged with are bailable. The respondents have not challenge the fact that the offences charged are bailable and on whether or not the applicants have reliable sureties, they opted to remain silent on this but submitted that the Court be guided by the provisions of section 36(5) of the Economic and Organized Crime Control Act, Cap 200 RE 2002, and to exercise its jurisdiction judiciously when determining whether or not to grant bail and if grant bail the conditions to be provided for the applicants. The applicants counsel also submitted that bail is a constitutional right provided under Articles 15, 17 and 13(6)(b) of the United Republic Constitution, Cap 2 of the laws of Tanzania. The applicants counsels further submitted that, whilst they recognise that the discretion to grant bail lies upon the Court, the conditions to be provided are expected to be reasonable and in accordance with the law and thus prayed that the Court exercise leniency by providing commensurate 3 conditions to the circumstances obtaining before the Court related to the application. On the part of the Respondent Republic, they registered no objection to the prayers for bail advanced by the applicants but prayed that the Court in exercising its discretion be guided by section 36(5) of EOCCA when considering conditions to provide. We have carefully considered the submissions presented before this Court, there is no argument that bail is a right of an accused person hence Penal legislations provide modalities for that. There is no doubt that the constitutional provisions on equality before

the law which encompass presumption of innocence for an accused person are relevant and have received due consideration. Bail was amply defined in Criminal Appeal No. 168 of 2012, DPP vs Bashiri Waziri and Mugesu Anthony {unreported} where the Court of Appeal at that bail is; "a mechanism designed to ensure that a person who is subject to the strictures of the law stays out of confinement while the process of inquiry into his/her liability in the criminal process is being investigated, or if he has been charged in a court of law, his/her personal freedom is guaranteed before the end of the trial through him/her furnishing security as part of, the undertaking to turn up whenever called up. The institution of bail, therefore, falls on the positive side of the principle of presumption of innocence which we all cherish. As we remarked earlier, this principle can only be derogated from on public policy, and only when the public policy is backed by dear provisions of the law". Taking into consideration what is alluded to above, it is clear that the underlying consideration in grant of bail for the Court, where there is no provision of law prohibiting grant of bail, is an undertaking by the applicant/accused to turn up whenever called up for hearing of the charges he faces and furnishing adequate security for that purpose. The issue of severity of an offence and punishment is also an important issue for consideration, though we are also aware that the offence charged are bailable, and that the law has put in place mandatory conditions where the Court grants bail. Conditions which in effect are there to ensure availability of the accused persons for their hearing and the Court is also empowered to impose other conditions if it is inclined to do so. All in all we are also aware that each case should be adjudged from its own specific circumstances. That being the case, and having considered and properly warned ourselves of all the pertinent matters obtaining to this case and the consequences thereto we order as follows: That JACKSON MATANDU (1st applicant), PROF. JOHN FERDINANDI MACHIWA (2nd applicant), JANE MPUYA (3rd applicant), GODWIN GERSON MSHANA (4th applicant) and PROF. PHILEMON MUSHI (5th applicant) respectively be admitted to bail as prayed, subject to the following conditions hereunder:

1. Subject to the principle of sharing and taking into consideration the value of the charged amount JACKSON MATANDU (1st applicant), PROF. JOHN FERDINANDI MACHIWA (2nd applicant), JANE MPUYA (3rd applicant), GODWIN GERSON MSHANA (4th applicant) and PROF. PHILEMON MUSHI (5th applicant) to deposit cash Tshs. 247,994,382.0 or immovable property of equivalent amount.
2. Each Applicant to provide two reliable sureties who are to execute a bond of Tshs 15,000,000/- each. One of the two sureties for each applicant must be 5 employed in the service of the Government of United Republic of Tanzania or her Institutions.
3. The applicants not to leave the vicinity/area within the jurisdiction of this Court without permission from the Resident Magistrate of the Court of Resident Magistrate of Iringa Region at Iringa.
4. Each of the applicants to surrender all travel documents including passports to the Resident Magistrate, Resident Magistrate Court of Iringa at Iringa.

5. Applicants to Report to Regional Crimes Officer Iringa upon a schedule designed and provided by the RCO Iringa.
 6. Verification of sureties and all related bond documents shall be effected by the Resident Magistrate, of the Resident Magistrate Court of Iringa Region at Iringa. 6
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