

TANZANIA / JUDGMENT

james john siwakwi and 5 others

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IN THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA) AT MBEYA MISC. CRIMINAL APPLICATION NO. 117 OF 2020
(Originating from Momba District Court at Chapwa in Economic Crimes Case No. 7 of 2020.)
JAMES JOHN SIWAKWI..... 1st APPLICANT SAFARI STIVIN
SINKALA..... 2nd APPLICANT RAJABU WILIUM
MWAKAJOBE..... 3rd APPLICANT SALUM EDDY KALINGA
ELIA..... 4th APPLICANT IMA YOHANA
SIMKOKO..... 5th APPLICANT PETER KAMBONA
SILWIMBA..... 6th APPLICANT VERSUS THE
REPUBLIC..... RESPONDENT

RULING

Date of Hearing: 30/11 /2020 Date of Ruling : 15/12/2020 MONGELLA, J. This ruling follows a preliminary objection raised by the respondent against the applicants' application for bail. The applicants stand charged with two counts being: First count, unlawful possession of fire arm contrary to section 20 (1) & (2) of the Fire Arms and Ammunition Control Act No. 02 of 2015 as amended and read together with paragraph 13 and 31 of the First Schedule to the Economic and Organised Crime Control Act, Cap 200 R.E. 2019. Second count, Unlawful possession of ammunition contrary to section 21 (1) of the Fire Arms and Ammunition Control Act No. 02 of 2015 as amended and read together with paragraph 31 of the First Schedule to the Economic and Organised Crime Control Act, Cap 200 R.E. 2019 (EOCCA). The respondent's preliminary objection is to the effect that the application is incompetent for improperly moving the court. Both parties were represented whereby the applicants were represented by Ms. Nyansige Kajanja, learned advocate and the respondent was represented by Mr. Baraka Mgaya, learned State Attorney. It was argued orally. In his submission, Mr. Mgaya argued that the applicants are applying for bail through section 36 (1) of EOCCA. They filed the application while at Mamba District court facing economic crimes case no. 7 of 2020 whereby they are charged with unlawful possession of firearms and unlawful possession of two bullets. The value of the offence has not been stated. Basing on the above facts, he said that section 36 (1) of EOCCA under which the application is made states that, before conviction by the court, the court may grant bail. Referring to section 3

of the same Act, he argued that the term “court” has been defined to mean the High Court sitting as an economic crimes court, pursuant to section 3 (1). Section 3(1) stipulates that the jurisdiction to hear economic crimes cases is vested in the High Court. On these bases, Mr. Mgaya contended that for this court to grant bail as prayed by the applicants it has to be sitting on determination of the main case, but in the application at hand, the main case is still pending at the District court on committal proceedings. He was of the view that since there is no main case pending for determination before this court, the provision under which the application at hand is brought does not grant jurisdiction to this court to entertain the application. The application is thus incompetent. He further argued that since the main case is still at Momba District court for committal proceedings, the proper provision would have been section 29 (4) (a) & (b) of EOCCA. Subsection (4) (a) talks of the value being below T.shs. 10 million, whereby the application for bail shall be entertained by the lower court. In consideration of this provision he was of the stance that since no value has been stated, the applicants should have filed the application in the subordinate court. To buttress his point he referred to a decision of this court in the case of *Martha Kasmiri & 2 Others*

v. The Republic, Misc. Economic Cause No. 31 of 2019 (Ndunguru, J.). In reply, Ms. Kajanja was of the view that the interpretation of section 36

(1) is misconceived by the learned counsel by confusing it with section 29

(4) (b) of EOCCA. She contended that section 36 (1) provides for general conditions in entertaining economic crimes cases. The section gives this court jurisdiction on all matters at any stage of the matter whereby a person has been charged by an economic crimes case. She further argued that section 29 (4) (a) is applicable whereby the value is below T.shs. 10 million. The provision, she said, provides for conditions where bail application can be entertained at committal proceedings stage and the value is below T.shs. 10 million. She argued that the law is silent on economic crimes whereby the value has not been stated. She was of the stance that since this court has unlimited jurisdiction, the application is therefore competent. In an endeavour to distinguish the case of *Martha Kasmiri* (supra), Ms. Kajanja gave a rather absurd argument that the same is not binding upon this court as it was decided by a fellow High Court Judge. She insisted that this court has jurisdiction to entertain the application under section 3 of EOCCA and thus it is properly moved under the cited section 36 (1). She prayed for the preliminary objection to be overruled. Mr. Mgaya rejoined by submitting that he has not confused the application of section 29 (4) (b) and section 36 (1) of EOCCA. He argued that both provisions are dependent as they insist that the court (High Court) can only entertain the application where the committal is already done and the case is before the High Court. He reiterated his position that the bail application has been brought to this court while not seated as an economic crimes court. He prayed for the court to be persuaded by the decision in *Martha Kasmiri* (supra). /i/ After considering the arguments of both counsels, I am of the firm view that the contention lies with the application of section 29 (4) (a) & (b) and section 36 (1) of EOCCA. For ease of reference I wish first to reproduce the said provision as hereunder: “Section 29 (4): After the accused

has been addressed as required by subsection (3) the magistrate shall, before ordering 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- fa) Between the arrest and the committal of the accused for trial by the court, is hereby vested in the district court and the court of a resident magistrate if the value of any property involved in the offence charged is less than ten million shillings.

- (b) After committal of the accused for trial but before commencement of the trial before the court, is hereby vested in the High Court. Section 36 (1) provides: "After a person is charged but before he is convicted by the court, the court may on its own motion or upon an application made by the accused person, subject to the following provisions of this section, admit the accused person to bail. " It is in fact not disputed that the applicants are still in the District court undergoing committal proceedings on the offences charged. The application for bail is brought under section 36 (1) of EOCCA, which as rightly argued by Ms. Kajanja gives a general guidance on the powers of the High Court to grant bail on economic crimes. However, in my considered view, this provision is not to be construed in isolation of other provisions governing grant of bail by the courts. Section 29 (4) (a) vests powers to the district or resident magistrates' courts to grant bail where the matter is pending before such courts on committal proceedings and where the value involved in the said matter does not exceed 10 million shillings. On similar circumstances, that is, where the matter does not exceed 10 million shillings, as provided under section 29
- (4) (b), the High Court can only entertain a bail application where the accused has already been committed for trial, but before commencement of the trial before the Court, that is, the Corruption and Economic Crimes Division of the High Court, as established under section 3(1) of EOCCA. Ms. Kajanja argued that the offences the applicants stand charged have no value and the law is silent as to such a situation. In my settled opinion, where an offence charged has no specified monetary value, then it is as good as it has been fixed at zero price, thus below 10 million shillings. Under the circumstances, therefore, I subscribe to Mr. Mgaya's contention that the court with jurisdiction to entertain the applicants' bail is the district court given the fact that the matter is still at committal stage in the same court. At this juncture, I find the wisdom of my learned brother, Ndunguru, J. in *Martha Kasmiri* (supra) worth of consideration. In the said decision, Ndunguru, J. invoked the wisdom of the Court of Appeal in the case of *Republic v. Dodoli Kapufi and Another*, Criminal Revision No. 1 of 2008 c/f No. 2 of 2008 (unreported) in which it was held that during pre-committal stage, the subordinate court is empowered to admit an accused to bail for bailable offence triable by the High Court. Since the offence in the case at hand has no specified monetary value, the subordinate district court is empowered to entertain it. The High Court can only deal with bail applications where the offence categorically exceeds 10 million shillings or where the accused has already been committed for trial, but before the trial commences or where the High Court is sitting as an economic crimes court. Given the above observation I sustain the respondent's preliminary objection and dismiss the applicants' application. The applicants

are hereby advised to apply for bail in the district court pending committal proceedings if they still so wish. Dated at Mbeya on this 15th day of December 2020 L M. MO[^]IGELLA JUDGE Court: Ruling delivered in Mbeya, through virtual Court, on this 15th day of December 2020 in the presence of the applicants and Mr. Baraka Mgaya, learned State Attorney for the respondent. L M. MONGELLA JUDGE

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