

TANZANIA / JUDGMENT

khalid yusuph hassan vs republic

2017 tzhc 2285 10 august 2017

COURT
TZHCDECIDED
10 August 2017

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IN THE HIGH COURT OF TANZANIA THE CORRUPTION AND ECONOMIC CRIMES DIVISION
(DAR ES SALAAM REGISTRY) AT PA R ES SALAAM MISC. ECONOMIC CAUSE NO. 22 OF 2017
[Originating from Economic Crime CAUSE No. 35 of 2017 of Kisutu RM'S Court] KHALID YUSUPH
HASSAN..... APPLICANT VERSUS REPUBLIC.....
RESPONDENT Date of last order: - 4/8/2017 Date of Ruling: - 10/8/2017

RULING

W.B. Korosso, j.: Khalid Yusuph Hassan has filed an application vide section 36(1) and 5(b) and (c), Section 36(6)(c), Section 36(7), Section 3((3)(a) and Section 29(4)(d) of the Economic and Organized Crimes Control Act, Cap 200 RE 2002 (as amended by the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016 (hereinafter to be referred as EOCCA), supported by an affidavit affirmed by Mashaka Ngole, an advocate of the High Court of Tanzania duly instructed to represent the applicant. The application sought relief praying for this Court to be pleased to issue an order releasing the applicant on bail with sureties pending hearing and determination of Economic Case No. 35 of 2017, currently pending before the Court of Resident Magistrate. At the outset it is important for the Court to satisfy itself whether it has been properly moved to entertain a matter under consideration. We therefore move to consider the provisions cited by the applicants to move this Court, starting with section 36(1) and (5)(b) and (c) of EOCCA. Section 36(1) is relevant empowering this Court to grant bail to a person who is charged but before conviction. The applicant has applied for bail while his case is still pending at the Resident Magistrate Court of Dar es Salaam. Section 36(5) (b) and (c) is relevant upon grant of bail and addresses conditions to be given to the applicant. It should be noted though that conditions are covered under all provisions of subsection 5 of section 36 and not only on subsection (b) and (c) and in fact subsection (a), (b), (c) and (d) being mandatory upon grant of bail. Subsection 7 of Section 36 defines a Court with jurisdiction to hear the case, and therefore we find the provisions relevant because before a court proceeds to determine the matter it has to satisfy itself it has the jurisdiction to proceed with hearing and determination of the matter. Section 3(3)(a) of EOCCA addresses establishment of this Court and its jurisdiction and section 29(4)(d) of EOCCA also cited by the applicants also addresses the jurisdiction of this Court to grant bail in terms of amount of value of property involved in an offence charged. Consequently looking at all the provisions cited

it is clear that one cannot say that there is one which is completely irrelevant, though the most relevant in terms of the bail application are section 36(1) and section 29(4)(d) of EOCCA others being merely to state relevant conditions to be ordered where the Court grants bail to the applicant and other provisions related to the appropriate Court to file such an application. Upon consideration of the matter on hand, and having discerned that there is no dispute on the part of both parties that the applicant, is the 2nd accused person in Economic Crime Case No. 35 of 2015 at the Court of Resident Magistrate Dar es Salaam at Kisutu, as shown by the attachment to the applicants affidavit- the charge sheet and also the contents of paragraph 2 and 3 of the affidavit supporting the application which has not been disputed by the respondent Republic in their submissions, that the case is pending committal proceedings. Having regard to the decision in the case of DPP vs Li Ling Ling, Criminal Appeal No. 508 of 2015, Court of Appeal (unreported) that establishes the fact that this Court has jurisdiction to entertain this matter. We therefore find that this Court has jurisdiction to entertain the matter. The applicant asserted in paragraph 3 of the supporting affidavit that the offences for which he is charged are bailable, a fact not challenged in the submissions by the Respondent Republic represented by Mr. Mchungahela Learned State Attorney. The Court after going through the presented charge sheet availed to this Court, it is clear that the applicant is charged with four other accused persons 9Raymond Adolf Louis; Haruni Lyson Mpande; Khamis Ally Omar and Benson Vitalis Malembo and they face 110 counts. The applicant is charged on the 2nd to 106th counts of Forgery contrary to section 333, 335(5){a} and (d)(i) and 337 of the Penal Code Cap 16 RE 2002; and Occasioning Loss -to a Specified Authority contrary to paragraphs 10(1) & {4} and section 57(1) and section 60(2) of EOCCA in count 107. Also the alternative count of Aiding Tax Evasion contrary to section 80 of the Tax Administration Act, 2015 in the 110th count. The Respondent Republic did not register any objection to the bail application and implored the Court to comply with section 36(5) and (6) of EOCCA in terms of the mandatory conditions if the Court grants bail to the applicant. The applicants counsel, Mr. Mashaka Ngole, learned Advocate for the applicant prayed for lenient conditions to be ordered where the applicant is granted and for the Court to disregard the order for the applicant to deposit half of the value of the property stated in the particulars of the offence charged and at the same time to remember the principle of sharing since the applicant is one of the accused among five accused persons in the relevant charge sheet and facing the relevant offence. The position of law which has been reiterated and restated in various holdings of the Court of Appeal and this Court is that bail is a right and in bailable offences there is no question of discretion in granting bail but Courts are expected when considering bail applications to be guided by law and to consider the availability of the applicant to appear during hearing of the trial if granted bail. In effect the Court's discretion is left in determining the value of the bond and the nature of surety and consideration of the mandatory conditions. In the present case having regard to the fact that the offences for which the applicant is charged are bailable, also the fact that the Respondent Republic registered no objection, this Court finds no plausible reason to deny bail to the applicant. In the premises, the applicant KHALID YUSUPH HASSAN is hereby admitted to bail as prayed. The Court has also considered the prayers by the applicants counsel on the issue of being lenient in terms of providing conditions for bail. It is pertinent to understand that with respect to the matter on hand and the offence for which the

applicant is charged relates to property with an estimated value above ten million shillings, the law has provided for mandatory conditions which have to be complied with. Therefore, pursuant to Section 36(5) and 36(6) of the Economic and Organized Crime Control Act, Cap 200 R.E 2002, the grant of bail to applicant is subject to the conditions set hereunder:

1. The applicant, KHALID YUSUPH HASSAN is to deposit Tshs. 1,261,897,023/- or immovable property of equivalent amount. (12,618,970,229/- x 1/2 divided by 5). The amount being derived after considering the principle of sharing, there being five accused persons in Economic Crime Case No. 35 of 2017 pending at Resident Magistrate Court of Dar es Salaam at Kisutu.
 2. The applicant to provide two reliable sureties who are to execute a bond of Tshs. 50,000,000/- each. One of the two sureties must be employed in the service of the Government of the United Republic of Tanzania or a Public Institution.
 3. The applicant will not leave the jurisdiction of this court (the High Court), without permission of the Court of Resident Magistrate of Dar es Salaam, at Kisutu.
 4. The applicant is to surrender a passport and other travelling documents to the presiding Resident Magistrate, of Resident Magistrate Court of Dar es Salaam, at Kisutu.
 5. The Applicant to report at office of the Regional Crimes Officer- once in every two weeks or according to a schedule designed by the Regional Crimes Officer.
 6. Verification of documents related to sureties and bond to be effected by a Resident Magistrate at the Resident Magistrate Court of Dar es Salaam, at Kisutu.
- 1 a: :i it - \p. v ' V Winfrida B. Korosso
- ' :: J«dge ■ .1, y 10th August 2017 Ruling delivered in open court this day, in the presence of Dr Zainab Mango, Learned Principal State Attorney assisted by Ms. Batilda Mushi, learned State Attorney for the Respondent Republic and Mr. Augustine Kusalika, Learned Advocate representing the applicant. Also present is the Applicant. i/g ;»»; •i-•: ■ : ■ -: Winfrida B. Korosso te Judge V-S, y & W ' ' 10 th August 2017 SV/<> ■ ' " i" V. y . \ : y - , -Y ••

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