

TANZANIA / JUDGMENT

# maria kazi vs republic 2021

## tzhc 6055 27 august 2021

COURT  
TZHCDECIDED  
27 August 2021

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∴ IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISTRY OF SHINYANGA AT SHINYANGA MISC. CRIMINAL APPLICATION. NO. 24 OF 2021 MARIAM KAZI ... I  
..... APPLICANT VERSUS REPUBLIC RESPONDENT [Arising from Economic Crime Case No. 22/2021 from the Resident Magistrates Court of Bariadi at Bariadi.]

### RULING

26th & 27th August, 2021. KULITA, J.: This is an application for bail pending trial of the Applicant in Economic Case No. 22 of 2021 in the District Court of Bariadi. According to the holding charge, the Applicant is charged with two counts to wit: Stealing contrary to the provisions of section 258(1)(2) (a) of the Penal Code, Cap 16 RE 2019 in the 1st count. With regard to the 2nd count, the Applicant is charged in alternative to the first count with Unlawful Possession of Property Suspected of Having Been Stolen or Unlawfully Acquired contrary to Paragraph 7(1)(b) of the 1st schedule to and sections 157 (1) and 60 (2) of the Economic and Organized Crime Control Act, Cap. 200 R.E 2019. In the first count, it is alleged that, the Applicant together with 3 others on unknown dated between February up to May, 2021, at Kidinda street within Bariadi District, in Simiyu Region did steal various electrical items, all valued at Tshs. 199,803,240.40/= the property of WHITECITY GUANGDONG JV LTD. It was also alleged in respect of the fourth count that, the Applicant on 5th July, 2021 at sokoni street within Bariadi District, she was found in possession of electrical items all valued at Tshs. 12,016,512/= the property of WHITECITY GUANGDONG JV LTD. To date, the Applicant has neither been committed to the Corruption and Economic Crimes Division of the High Court for trial, nor the Director of Public Prosecutions issued consent and certificate of transfer to confer jurisdiction to the District Court of Bariadi, hence the instant application for bail. This application is brought under the provisions of section 29(4)(d) of the Economic and Organized Crime Control Act and section 148(3)(5)(a)(ii)(iii) of the Criminal Procedure Act Cap 20 RE 2019. It is supported by the affidavit of the Applicant, sworn on 5th of August, 2021. On 26th of August, 2021 this application came for hearing. Mr. Ijani 2 Augustino, Advocate appeared for the Applicant whereas Mr. Nestory Mwenda and Venance Mkonongo, learned State Attorneys appeared for the Respondent, Republic. Submitting in support of the application Mr. Ijani submitted that, the applicant's application originates from Economic Case

No. 22/2021 of Bariadi District Court. He added that, the applicant prays for bail at this Court for the reasons adduced in the affidavit of which he prayed to adopt the same. He asserted further that; they have come to this court as the lower Court has no jurisdiction to grant bail as per section 29(4)(d) of the Economic and Organized Crime Control Act. Lastly Mr. Ijani went on submitting that, the applicant should be given bail as she is a famous business woman and that she is just a suspect, whereby bail is her constitutional right. Mr. Ijani concluded that, by then there was no certificate from the DPP objecting bail. In response, Mr. Mwenda from the outset declared that, they do not resist the applicant's application, though he was of views that, the provisions used to move the court are not proper. To him, proper section is 36(1) and (5) of the Economic and Organized Crime Control Act. As thus, he urged this Court to grant bail under conditions in accordance with the requirement of the law. In rejoinder, Mr. Ijani was of the views that, 3 the cited section 29(4)(d) of the Economic and Organized Crime Control Act provides jurisdiction to this court to entertain the applicant's application and he urged this court to dispense with technicalities in determining the applicant's application as per article 107A (2) of the Constitution. This is the end of both parties' submissions. I have taken into consideration both parties' submissions together with the available records. The crucial issue for determination is, whether this Court has jurisdiction to grant the Applicants' application at hand. It is undisputed fact that, the applicant's holding charge in the economic offence states the value of the subject matter to be Tsh. 12,016,512/=. Again, it is not in dispute that section 29(4)(d) of the Economic and Organized Crime Control Act Cap. 200 provides that the High Court is the right place to determine bail when value of the subject matter is or above ten million shillings. I quote it bellow for easy of reference; - 29(4) After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that 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 4 the purposes of this section the power to hear bail applications and grant bail-

(a) N/A .

(b) N/A .

(c) N/A .

(d) in all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court On that note, with the existence of the principle of overriding objective, I am also settled in my mind that, this Court has Jurisdiction to entertain the Applicant's application. For that reason and on the bases that, the offences the Applicant is charged with are bailable. Also, as the applicant has right of bail pending trial of the main case as per Article 15(2) of the Constitution of the United Republic of Tanzania, 1977. And, so long as the Respondent, Republic does not oppose this Applicant's application, I accordingly grant this application. 5 As the subject matter in question is valued at Tshs. 12,016,512/= and the accused person is alone charged with this count, therefore the burden of liability is on her alone. Section 36(5) and (6) of the Economic and Organized Crime Control Act requires the Accused person or his surety to deposit cash monetary at least half of the value of the

property (subject matter in question) or the title deed- in alternative whose value is proved to be not less than that sum, and the rest half be executed by promissory bond. I thus proceed to direct the District Court of Bariadi to admit the Applicant to bail upon fulfilling the following conditions: -

- a) The Applicant to deposit cash of Tshs. 6,008,256/= which is the half of each accused's liability in monetary terms. Alternatively surrendering to court a title deed of an immovable property whose value is equivalent to or exceeds the above-mentioned sum. Value of the property must be dully certified by the professional valuer.
- b) The Applicant to execute a promissory bond in the remaining sum of Tshs. 6,008,256/= with two sureties.
- c) The Applicant to surrender the traveling documents if any. It is so held and ordered accordingly. 6 7

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