

TANZANIA / JUDGMENT

final ruling OMARY BASHIRI 12

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA SUB-REGISTRY OF MOSHI AT
MOSHI CRIMINAL APPLICATION NO. 19352/2024 (Arising from the Resident Magistrate Court in
Economic Crime Case No. 12204 of 2021) OMARY BASHIRI ABASI@
MADAFI.....APPLICANT VERSUS
REPUBLIC.....RESPONDENT

RULING

9th & 12th August, 2024. A.P. KILIMI, J.: This ruling is for bail application. The applicant herein has moved this court under section 148(1) (2) and (3) of the Criminal Procedure Act Cap 20 R.E 2022 praying as follows;

1. This Honorable Court be pleased to release the applicant/accused person on bail pending the trial and final determination of the charged offence
2. That, any other order(s) this Honorable Court may deem fit and just to grant. As per the applicants' affidavit in support of prayers above, he has deposed that, he and other ten (10) accused persons were charged for five counts by the respondent at Resident Magistrate Court of Moshi at Moshi in the Economic case No. 12204 of 2024. But for him he was only charged with 1st, 4th and 5th counts, which 1st count is conspiracy to commit an offence contrary to section 384 of the Penal Code Cap 16 R.E 1 2022, 4th Count is Unlawful possession of property suspected to have been stolen Contrary to section 312 of the Penal Code Cap 16 R.E 2022, and 5th Count is Occasioning loss to a specified authority contrary to paragraph 10(1) of the 1st schedule to and section 57 (1) and 60(2) of the Economic and organized Crime Control Act, Cap 200 R.E 2022. The applicant further averred that on the first count it was alleged that he conspired with ten others co accused persons to commit an offence of stealing damaging and interfering with property, 4th count that he was found with unlawful possession of copper wire the properties of Tanzania Telecommunication company limited and the 5th count it was alleged that together with other ten co accused persons they caused the Tanzania Telecommunication company limited to suffer a pecuniary loss valued at Tshs. 760,199,900/=. He was arrested and arraigned in said court on 08/05/2024 where he was denied bail, thus he is in this court for bail application as this court has jurisdiction to grant. When this application was placed before me for hearing, the applicant was unrepresented thus stood himself whereas the respondent was represented by

Ms. Amina MKayala learned State Attorney. Submitting in support of the application, the applicant had no much to say rather than praying for this court to grant him bail and 2 stated that it was his right and that his health was not stable thus needed to go for treatment. Replying the same, Ms. Amina MKayala submitted that the respondent was not objecting the applicant application but prayed for the court to consider the provision of section 36(5) (6) of Economic and Organized Crime Control Act while granting bail to the applicant. Having considered the affidavit attached in this application together with the brief submissions from both parties, the issue for determination is whether the application at hand has merits or whether the applicant qualifies to be granted bail. Upon scanning the application at hand and the attached affidavit especially the attached annextures, I have noted that annexture 'A' is a charge sheet which shows that the applicant is being charged with other ten (10) co accused persons. Also, I have read his affidavit attached with this application as alluded hereinabove and it is true the applicant herein among those five counts, he is only charged with three counts which are 1st count, 4th count and the 5th count. Now whether the applicant qualified to be granted bail. I have considered the 1st count facing the applicant is Conspiracy to commit an offence c/s 384 of the penal Code cap 16 RE 2022. Another is the 4th Count is Unlawful possession of property suspected to have been stolen 3 Contrary to section 312 of the Penal Code Cap 16 R.E 2022, and in 5th Count is Occasioning loss to a specified authority contrary to paragraph 10(1) of the 1st schedule to and section 57 (1) and 60(2) of the Economic and organized Crime Control Act, Cap 200 R.E 2022. In respect to 5th count which involves all accused persons including the applicant, the charge sheet against them reveals that all eleven accused persons are being charged with the offence of Occasioning Loss to a specified Authority contrary to paragraph 10(1) of the 1st schedule to and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act. The above is an economic offence wherein the applicant has been charged jointly and together with other ten (10) accused persons namely Joshua Ndereko Kaaya @Maftati Cape, Wilbad Hubert Kanza @Masai, Emmanuel Patrice Benechuwa @ Batansumeno, Togolan Salim Rashid @Kipara, John Joseph Msoyoki@Mkenyaa, Philimon Gasper Mosengela @Phile, Joseph Thomas Kisanga@Trawela, Vicent Yusuph @Mafole@Rasta, Shabani Juma Issa @wh Mparee, Idd Salim Omary@ Shehe@Chokuchoku The alleged particulars of the offence state that, between 2023 to 22nd day of April, 2024 within the District of Moshi in Kilimanjaro Region jointly and together by their willful act caused Tanzania 4 Telecommunication Company Limited to suffer a pecuniary loss valued at Tanzania Shillings Seven Hundred Sixty Million, One hundred NinetyNine Thousand Nine Hundred (Tshs. 760,199,900/=). Bail is the constitutional right as provided for under article 13(6)(b) of the United Republic of Tanzania constitution Cap 2, which provides that no person charged with criminal offence shall be treated as guilty of the offence until proved guilty of that offence. That is the presumption of innocence until proved guilty which signifies that the applicant herein is entitled for bail pending hearing of his case at the subordinate court. Further section 36(5)(a)(b)(c)(d) of the Economic and Organized Crimes Control Act (Supra) imposes some of the conditions for the court to follow when granting bail to the applicant. It provides that;

- (5) Where the Court decides to admit an accused person to bail, it shall impose the following conditions on the bail, namely-
- (a) where the offence with which the person is charged involves actual money or property whose value exceeds ten million shillings unless that person deposits cash or other property equivalent to half the amount or value of actual money or property involved and the rest is secured by execution of a bond: Provided that, where the property to be deposited is immovable, it shall be sufficient to deposit the title deed, or if the title deed is not available such other evidence as is satisfactory to the court in proof of existence of the property; save that this provision shall not apply in the case of police bail; (b) appearance by the accused before the Court on a specified date at a specified time and place; (c) surrender by the accused to the police of his passport or any other travel document; and (d) restriction of the movement of the accused to the area of the town, village or other area of his residence.
- (6) The Court may, in addition to the mandatory conditions prescribed in subsection (4), impose any one or more of the following conditions, namely- (a) requiring the accused to report at specified intervals to a police station or other authority in his area of residence; (b) requiring the accused to abstain from visiting a particular locality or premises, or association with certain specified persons;
- (c) any other condition which the Court may deem fit to impose in addition to the preceding conditions” Being guided by the above authority, the applicant herein is being charged with other ten fellows to have occasioned loss of the Tanzania 6 telecommunication property valued at Tshs. 760,199,900/= which automatically exceeds ten million shillings. Since the applicant is charged with other ten persons, it is a trite law the court should use the principle of sharing the amount of value of money involved in an offence when determining bail conditions where there is more than one accused person facing the same charges as it was introduced in the precedent of the Court Appeal in *Silvester Hillu Dawi and Others vs Director of Public Prosecutions*, Criminal Appeal No. 250 of 2006; The principle is now certain and settled. (see: *Abeid Mussa & Another s. Republic*, Misc. Criminal Application No. 9 of 2017; *Salum Abeid Mbaya & Ten Others vs Republic*, Consolidated Misc Economic Applications Nos. 68 & 69 of 2019; and, *Said Bakari & Another v. Republic*, Misc. Criminal Economic Application No. 79 of 2020). Thus, when the above amount is divided into 11 accused person it becomes Tshs. 69,109,082/= for each accused person. Therefore, to be able to adhere with such conditions listed and principle above the applicant herein should be released on bail pending hearing of his case at the subordinate court, after comply with the following conditions; 7
1. Applicant must procure two reliable sureties, and one must be employee of the government/ local government, government agency, or another organization recognized under the law and must be resident within Kilimanjaro region;

2. Each of the applicant's sureties shall sign a bond of sum of Tanzanian Shillings Seventeen Million and two hundreds and seventy-seven thousand and two hundred and seventy only (17,277,270/=) as a security for appearance of the applicant in court.
3. Applicant's surety who is employed should submit letters and certified copies of identity cards from his respective employer.
4. Each applicant's sureties should produce in court letter of introduction from their respective street or village leader.
5. Each applicant's sureties shall undertake to make sure that his applicant is available and enter attendance in court whenever needed.
6. For applicant himself shall deposit cash in sum of Tanzanian Shillings Thirty four millions and fifty hundred and fifty four thousand and five hundred and forty one only (34,554,541/=) which is the half of the amount calculated above, or in case the applicant decides to deposit, immovable, or approved property, in 8 reu of cash he shall deposit either title deed supported by Valuation Report from the Government Valuer or documents justifying the approved property from the appropriate authority displaying equivalent or more amount of money cited above.
7. The Applicant shall surrender his passport or any other travelling documents, if any, to the Registrar of this court;
8. The applicant must enter appearance in court on every date when the case is scheduled for mention, hearing or any other order or direction of the court. The applicant shall not travel out of Kilimanjaro region without prior written leave of the Registrar of this court. The above ordered bail conditions shall be supervised and sureties' approval by the Deputy Registrar of this court, Moshi District Registry. In the circumstances the application is granted upon fulfilling the above conditions. It is so ordered. DATED at MOSHI this 12th day of August, 2024. 9 X JUDGE Signed by: A. P. KILIMI Court: Ruling delivered today on 12th day of August, 2024 in the presence Ms. Amina Mkayala learned state Attorney for the respondent. Applicant also present. Sgd; A. P. KILIMI JUDGE 12/08/2024 Court: Right of Appeal duly explained. Sgd; A. P. KILIMI JUDGE 12/08/2024 10

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