

TANZANIA / JUDGMENT

pamela robert raphael vs republic

2022 tzhc 9596 25 may 2022

COURT
TZHCDECIDED
25 May 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA IN THE DISTRICT REGISTRY OF
MWANZA AT MWANZA MISC. ECONOMIC CAUSE NO. 18 OF 2022 (Arising from Economic
Crimes Case No 06/2022 from the Resident Magistrate Court of Geita at Geita) PAMELA ROBERT
@ RAPHAELI..... APPLICANT VERSUS THE REPUBLIC.....
RESPONDENT

RULING

Last Order date: 23.05.2022 Ruling Date: 25.05.2022 M. MNYUKWA, J. The applicant Pamela Robert @ Raphael was arraigned before the Resident Magistrate Court of Geita in Economic Crime Case No. 06 of 2022 for three different offences which are; unlawful possession of monofilament contrary to Regulation 66(l)(a) and 66(4) of the Fisheries Regulations GN No 308 of 2009 as amended by Fisheries (Amendment) Regulations GN No. 492 of 2020, unlawful possession of gill nets contrary to Regulation 66(l)(f) and 66(4) of the Fisheries Regulations GN No 308 of 2009 as amended by Fisheries (Amendment) Regulations GN No 492 of 2020 and she is also charged with the offence of leading organized i crime contrary to paragraph 4(l)(a) of the first schedule and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, Cap 200 R.E 2019. The applicant moved this court by way of Chamber summons made under section 29(4)(d) and 36(1) of the Economic and Organized Crimes Control Act, Cap 200 R.E 2019 as amended by the Written Laws (Miscellaneous Amendments) Act No 3 of 2016 accompanied by an affidavit sworn by the applicant's counsel Joseph Kinango, who moved this court under a certificate of urgency to grant bail pending the final hearing and determination of the Economic Crime Case against his client. When the application was served to the Respondent, that is the Republic, she did not file counter affidavit as she was not objecting the applicant's application. On the day scheduled for hearing, the applicant was represented by the learned counsel, Joseph Kinango while the Respondent was represented by the learned senior state attorney, Ms. Magreth Mwaseba. By the consent of the parties and with the leave of the court, the application was argued orally. During the hearing of the application, the applicant's counsel prayed to adopt his chamber summons and affidavit filed in this court on 18/05/2022 to form part of his submission. He avers that he prays this court to grant bail to the applicant because it is her constitutional right as 2 the offence in which the applicant is charged with is bailable and that the applicant had

no record to abscond or to breach bail conditions. He went on that, if the applicant will be granted bail she will have reliable sureties and since the value of the subject matter has not been stated in the charge sheet, he prays the court to grant bail to the applicant by imposing conditions which may be reasonable to enable her to fulfill those conditions. On her part, the learned state attorney did not object to the applicant's application. However, she prays the court to impose conditions which can ensure that the applicant will be readily available when she is required to appear before the court to take up her trial. Having heard the brief submissions of both parties, the issue for consideration and determination is whether the application is meritorious. As I have earlier on stated, the Respondent did not object to the application and that's why in her oral submission she supported the application and she did not oppose the application as she did not file a reply to the affidavit. In other words, this application for bail is uncontested. I say so because in their submissions, the counsel for parties are in agreement that indeed bail is the constitutional right and the offence in which the applicant is charged with is bailable. 3 Upon having that stand from both parties' counsel, it is worth to note that, bail conditions in this kind of cases that is the economic cases are governed by the Economic and Organized Crime Control Act, Cap 200 R.E 2019 (herein after to be referred as EOCCA). One among the guiding section is section 36 of the EOCCA which outline different conditions that the court must satisfy before admitting a person to bail. Among of those conditions is for the applicant to deposit half of the amount of money or deposit the title deed of the immovable property or any other evidence which may satisfy the court on the existence of the property of such value. As it was noted by the counsel for the applicant, in our application at hand the charge sheet is silent on the value of the subject matter as the same was not stated. Section 29(4)(d) of the EOCCA gave power to the High Court to hear and determine the matter if the value of the subject matter involved is of the value of Tsh. 10,000,000/= or more at any stage before the commencement of trial before the Corruption and Economic Crimes Division of the High Court. Now the important question is, does this court have power to entertain the present application while the value of the subject matter is not disclosed? To my understanding the answer is yes since there is no provision which expressly denied this court the jurisdiction to hear the bail application if the value of the subject matter is not stated as the EOCCA 4 is silent on that circumstance. When I revisited Article 108(2) of the Constitution of the United Republic of Tanzania, it is my view that the said Constitution gave inherent power to the High Court in the circumstances like this, as it was rightly observed by my learned brother Hon. Judge C.P. Mkeha in the case of Suleiman Masoud Suleiman and Aisha Khalfan Soud, Misc. Criminal Application No 10 of 2020 HCT at Shinyanga, when supporting his argument with the provision of Article 108(2) of the Constitution of the United Republic of Tanzania, Cap 2 R.E 2019 that gives mandates to the High Court to determine any matter which the Constitution or any law does not expressly provide which court had jurisdiction had this to say: "On the strength of the above cited subarticle of the Constitution, it is my holding that, it is the High Court that has jurisdiction to hear bail applications and grant bail at the time between the arrest and committal of the accused for trial by the Corruption and Economic Crimes Division of the High Court, if the value of property(ies) involved in the economic offences charged is uncertain. From the above reasoning, I subscribe to the above decision taking into consideration that bail is a constitutional right and bearing in mind that the offence is bailable

and more importantly the person is entitled to enjoy her right of movement. 5 Thus after considering the submissions of parties to this court and for the reasons stated herein, I accordingly grant bail to the applicant as prayed and I proceed to direct the committal court that is the Resident Magistrate Court of Geita at Geita to admit the applicant on bail on fulfilling the following conditions:

1. The applicant shall sign a bond of Tsh 6,000,000/=.
2. The applicant should have two reliable sureties, citizens of the United Republic of Tanzania and residents of the local jurisdiction of the court who shall sign a bond of Tsh 5,000,000/= or submit a proof of immovable property with the same value.
3. The applicant's sureties must produce National Identity Card vetted for approval by the Resident Magistrate Incharge of Geita Resident Magistrate Court.
4. The sureties must have introduction letter from their respective Ward Executive Officer or Employer.
5. The applicant shall surrender his passport and other travel documents if any, to the Geita Regional Central Police Station for safe custody pending the trial or disposal of the case against him.
6. The applicant shall appear before the court on the dates and times as shall be scheduled by either the Resident Magistrate 6 Incharge of Geita Resident Magistrate Court, Deputy Registrar or this Court as the case may be.
7. The applicant shall not travel outside of the local jurisdiction of the court without prior permission by the Resident Magistrate Incharge of Geita Resident Magistrate Court.
8. The Resident Magistrate Incharge of Geita Resident Magistrate Court shall ensure that the bail conditions and terms thereof are complied with and maintained accordingly even after the applicant's admission to bail pending the timely disposal or trial of the case against the applicant. It is so ordered. M.MNYUKWA JUDGE 25/05/2022 25th day of May, 2022 in the presence of rw M.MNYUKWA JUDGE 25/05/2022 7

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