

TANZANIA / JUDGMENT

Respicius Ruling

COURT
TANZLII

DECIDED
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THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA MISCELLANEOUS CRIMINAL APPLICATION NO. 26757 OF 2024 (Arising
from Economic case No. 25919/2024 before the Resident Magistrate’s Court of Mwanza at
Mwanza) RESPICIUS RUMANYIKA RWEGOSHORA APPLICANT VERSUS THE
REPUBLIC RESPONDENT

RULING

20th & 23rd September 2024 CHUMA, J. This ruling is in respect of a bail application lodged by the Applicant Respicius Rumanyika Rwegoshora preferred under Section 29(4) (d) and Section 36(1) of the Economic and Organized Crime Control Act. [Cap 200 R.E 2002] (henceforth EOCCA). The application is supported by an affidavit sworn by Mr. Amri Linus, applicant’s advocate, seeking bail pending the trial of Economic Case No. 25919/2024 before the Court of Resident Magistrate of Mwanza at Mwanza. When the application was called on for hearing, the applicant was present and represented by Learned Advocate Mr. Amri Linus, while Ms. Jaines Kihwelo and Mr. Mahembega Mtiro State Attorney represented the Republic. 1 In support of the application, Mr. Amri Linus at first instance prayed adoption of the affidavit to be party of his submission and court record. Briefly, Mr. Linus submitted that his client is currently in remand custody at Butimba Prison, pending the hearing process of Economic Case No. 25019 of 2024 before the Resident Magistrate’s Court of Mwanza at Mwanza. The Applicant faces three distinct offenses, containing 43 counts in total, with each offense carrying its gravity. Specifically, the first and third offenses consist of one count each, while the second offense involves a total of 41 counts. The charges are detailed as follows: One Leading Organized Crime, as defined under paragraph 4(l)(a) of the First Schedule to, and sections 57(1) and 60(2) both of the Economic and Organized Crime Control Act, [Cap. 200 R.E 2022]. It is alleged that the Applicant knowingly orchestrated a criminal racket, engendering embezzlement and misappropriation of properties belonging to TANZANIA ELECTRICAL SUPPLY COMPANY LIMITED, with an estimated worth of Tanzanian Shillings Two Billion, Twelve million, Three Hundred Forty-Six Thousand, Twenty-One Shillings and Forty-Three Cents (TZS. 2,012,346,021.43 /=) Two is Embezzlement and Misappropriation as defined in section 28(1) of the Prevention and Combating of Corruption Act, [Cap 329 R.E 2 2022], read together with paragraph 21 of the First Schedule and sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, [Cap. 200 R.E 2022]. The Applicant, in his role as a Public Official with Tanzania Electrical Supply Company Limited as a Supplies Officer at Mwanza Region

Warehouse, is charged with deceitfully allowing the first accused to misappropriate properties entrusted to him in his official capacity. Three is Occasioning Loss to a Specified Authority, as described under paragraph 10(l)(a) of the First Schedule to, and sections 57(1) and 60(2) both of the Economic and Organized Crime Control Act, [Cap. 200 R.E 2022]. The Applicant, in conjunction with the first accused, is alleged to have caused a substantial pecuniary loss of Tanzanian Shillings Two Billion, Twelve Million, Three Hundred Forty-Six Thousand, Twenty-One Shilling and Forty-Three Cents (TZS 2,012,346,021.43 /=) only to Tanzania Electrical Supply Company Limited, a distressing circumstance. Mr. Linus further avers that this court has exclusive jurisdiction to determine the instant bail application of the offence of this nature and that the offence in dispute is bailable and he added that the applicant is ready to meet bail conditions which will be set out by this court and he has reliable sureties to stand for him. 3 In reply, Ms. Jaimes Learned State Attorney for the respondent principally had no objection to the applicant's application for two grounds one the offences charged are bailable and two bail is a constitutional right. She went on to argue that this court is a proper avenue to entertain this kind of application. However, she prayed this court in imposing bail conditions to consider that this offence attracts public interest and the loss alleged caused to Tanzania Electrical Supply Limited worth TZS. 2,012,346,021.43. /= . And that the applicants' traveling documents should be surrendered to this court and any other conditions this court will deem fit to impose making sure that he attends court proceedings. I have gone through this court's records and the respective submissions by both parties. The question for determination is whether or not under the circumstances of this case, the applicant is entitled to the bail sought. Right from the outset, it should be understood that, in cases of this nature, the Court in consideration of the application is expected to exercise its discretion judiciously taking into consideration all important factors relating to a grant bail. The discretionary powers involved in the process of granting or refusing bail is a process in which the court is free, wise, and independent to consider the relevant laws, principles, rules, and 4 all circumstances surrounding the case at hand to reach the right decision that guarantees a proper and just end of the course of justice. Having considered the affidavit and oral submissions made by both parties before this court, and bearing in mind the fact that the offence is bailable as also conceded by both parties and being convinced that there are enough safeguards to ensure the availability of the applicant/accused person to the ongoing proceedings, I find that the applicant is entitled to the prayed bail. In the premises, it is accordingly ordered that bail be granted as prayed. Having granted bail to the applicant, the next task to consider is what conditions and terms of bail this court has to impose. The conditions are provided for under Sections 36 (5) and 36(6) of EOCCA. The law mandatorily imposes conditions in cases where the applicant is charged with the offence (s) in which the value involved is Ten million shillings or more. The Court is guided by section 36(5)(a) of EOCCA as amended by section 10 of Act No. 3 of 2016 and I quote the provision hereunder: - "Where the offence with which the person is charged involves actual money or property whose value exceeds ten million shillings unless the person deposits cash or other property equivalent to half the amount or value 5 of actual money or property involved and the rest is secured by execution of 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 the existence of

the property..... '(Underscoring is mine] And Section 36(6) of the EOCCA also reads thus; "The Court may, in addition to the mandatory conditions prescribed in subsection (5) impose any one or more of the following conditions, namely: -

- a) Requiring the accused to report at specific 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 condition, which appears to the Court to be likely to result in the appearance of the accused for the trial or resumed trial at the time and place required or as may be necessary for the interest of justice or the prevention of crime" The above provisions are very clear, unambiguous, and with no room left for misinterpretation and of what Section 36(5) of the EOCCA 6 entail as amended by Section 10 of Act No 3 of 2016. Provides that where the value of the property subject matter of the charge is ten million shillings or above as the case in the instant case "the court shall require that cash deposit equal to half the value be paid and the rest be secured by execution of the bond. "The value of the property, in this case, is TZS. 2,012,346,021.43/= I therefore, impose bail conditions as follows: -
 - 1) The applicant is to deposit cash TZS. 1,006,173,010,745/= being half the amount of the value of the property as per the charge sheet or to deposit the title deed of any immovable property of the above amount. The immovable property must be free from any encumbrances and the title deed shall be approved by the Registrar of Titles or any other recognized person acting on behalf, if the property has no title deed, then such other proof from the relevant authorities.
 - 2) That, the applicant provides two reliable sureties one being a government employee from within the area of this court's jurisdiction with introductory letters from the area of locality or their employer(s) having with them either National ID, passport or any other identity and will be required to execute a bond of the remaining half of the amount.
 - 3) That, the applicant should not leave the jurisdiction of the Court of 7 Resident Magistrate of Mwanza without its written permission.
 - 4) That, the applicant shall appear before the Court of Resident Magistrate of Mwanza on a specified date, time, and place, without failure,
 - 5) That, the applicant shall surrender the passport or any other traveling document to the court presiding over the case and, Where the applicant claims not to possess any travel documents, proof to that effect must be obtained from the Immigration Authority. The verification of sureties and bond documents shall be done by the Deputy Registrar of this Court together with the State Attorney. It is so ordered. DATED at MWANZA this 23rd day of September 2024. W.M. CHUMA JUDGE 8 The ruling delivered in court before Mr. Amri Linus advocate for the applicant, Ms. Jaines Kihwelo and Mr. Mahembega State Attorney for the

Republic this 23rd day of September 2024. W.M. CHUMA JUDGE 9

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