

TANZANIA / JUDGMENT

said selemani mgata vs republic

2018 tzhcced 40 28 september 2018

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA CORRUPTION AND ECONOMIC CRIMES DIVISION AT PAR ES SALAAM MISC. ECONOMIC CAUSE NO. 48 OF 2018 (Originating from the Economic Case No. 25 of 2018 of the Resident Magistrate's Court of Coastal Region at Kibaha) SAID SELEMANI MGATA..... APPLICANT VERSUS THE REPUBLIC..... RESPONDENT

RULING

Date of Last Order: - 27/09/2018 Date of Ruling: - 28/09/2018 L.L. MASHAKA, J This application was filed under certificate of urgency by the applicant namely, Said Selemani Mgata by way of chamber summons pursuant to section 36(1) and 29(4)(d) of the Economic and Organized Crime Control Act (herein referred as EOCCA), Cap 200 R.E 2002 as amended by Act No. 3 of 2016. The chamber summons was supported by affidavit deposed by Idd Mussa Msawanga, Advocate for the applicant, praying for this Hon. Court to be pleased to admit the applicant to bail pending determination of charges against him instituted in the Resident Magistrate's Court of Coast Region at Kibaha and any other orders this Court deem proper to grant. i In affidavit supporting this application at paragraph 5 reveals that on 17th October 2017, the applicant and another accused person who is not part of this application were arraigned before the Resident Magistrate's Court of Coast region at Kibaha, charged with unlawful dealing in trophies, to wit, 4 elephant tusks valued at USD 30,000 which is equivalent to Tshs. 65,100,000/= contrary to section 80(1) and 84(1) and Part 1 of the First Schedule of the Wildlife Conservation Act No. 5 of 2009 read together with paragraph 14(b) of the First Schedule to, and section 57(1) and 60(2) of the Economic and Organised Crime Control Act, Cap 200 R.E 2002. During hearing of this application, the applicant was duly represented by Mr. Iddi Msawanga, Advocate while the respondent Republic was represented by Ms.Tully Helela, State Attorney. In support of application, Learned Counsel for the applicant prayed his affidavit to form part of his submission and contended that the application is before this Hon. Court because the jurisdiction to hear bail application is vested to this Court and was made by virtue of section 36(1) and 29(4)(d) of the EOCCA. Learned Counsel submitted that, bail is a right of the accused person and not a privilege based on the principle of presumption of innocence until proven guilty as stipulated in Article 13(6)(b) together with Article 15 of the Constitution of the United Republic of Tanzania. To

support this position the case of Patel vs Republic (1971) HCD 361 was referred where Biron, J held that "A man whilst awaiting trial is as of right entitled to bail as there is presumption of innocence until the contrary is proved" It was his contention that this case laid down four principles when the court is considering bail; that the court has to be satisfied that if accused person is released on bail will enter appearance in his case, that the accused person is likely not to commit another offence if bailed out, thirdly the possibility of the accused person to interfere with the investigation and lastly the gravity of the offence and sentence to be met against the accused person. It was his contention that all these four conditions had been met by the applicant because before the present pending case, the applicant was previously arraigned at District Court of Bagamoyo at Msoga in Economic Case No.3 of 2016 which was partly heard and subsequently the Republic entered Nolle prosequi and later refiled the pending case at the Resident Magistrate's Court of Coastal region at Kibaha, which this application originates from. That in the previous case the applicant fulfilled all the conditions and was granted bail. Learned Counsel referred the case of Tito Douglas Lyimo vs Republic (1979) LRT 55, where the court held that "bail is a right rather than a privilege unless the court is convinced that to grant, will defeat the ends of justice as a failure of the accused person to appear before the court to stand his trial". Hence, he prayed to the Court to grant bail to the applicant. On the part of the respondent it is on record that they filed a counter affidavit deposed by Florentina Leonce Sumawe and have not registered objection to this application. Basically, Learned State Attorney for the respondent concede to the competence of this application before this Court, the jurisdiction of this court to entertain the application and also the fact that bail is the right of the accused person/ applicant. Learned State Attorney prayed to the court that when determining this application to be guided by section 36(5) and (6) of the EOCCA, Cap 200 R.E 2002. Having considered the submissions by both parties before the Court, and the fact that the application has conferred jurisdiction to this Court to determine the application, also the fact that the involved property is above ten million shillings therefore there is no question on the jurisdiction of this Court to entertain the matter at hand. I am also satisfied that the application before the Court is competent having regard to the cited provisions to move this Court that is section 29(4)(d) and 36(1) of the EOCCA, Cap 200 RE 2002. Moreover, the offence charged against the applicant is bailable in terms of the Act. It is also true that bail is a right as submitted by both Learned Counsel for the applicant and Learned State Attorney for the respondent, as observed in the case of HASSAN OTHMAN HASSAN@ HASANOO vs REPUBLIC, Criminal Appeal No 193 of 2014 that, " ..guided by the principle that an accused person is presumed innocent until proved guilty and the purpose of granting bail to an accused person is to let him enjoy his freedom so long as he does not default appearances in court when so required until his rights are determined in the criminal case..." This right may only be denied where there are justifiable reasons to do so but this Court has not been availed any reason warranting refusal of bail to the applicant. Consequently, the applicant one SAID SELEMANI MGATA is hereby admitted to bail subject to fulfilling the following conditions:

1. The applicant to deposit cash Tshs. 32,550,000/= being half of the alleged amount of USD 30,000 which is equivalent to Tshs. 65,100,000/-. Alternatively, the applicant to deposit title deed or any immovable property of value not less than Tshs. 32,550,000/=. The immovable

property must be free from any encumbrances and the title deed shall be approved by the Registrar 4 of Titles or any other recognized person acting on behalf and must be accompanied by a valuation report from the Government valuer. If the property has no title deed, then shall have approval from the local authorities of the place where the property is located.

2. The applicant must provide two reliable sureties who are to execute a bond of Tshs. 5,000,000/- each. One of the two sureties must be employed in the service of the Government of United Republic of Tanzania or private institution and the other must be a reputable person in the society.
3. The applicant not to leave the jurisdiction of this Court without permission from the Resident Magistrate In charge of Resident Magistrate's Court of Coastal Region at Kibaha.
4. The applicant must surrender all travelling documents including passports to the Regional Crimes Officer of Pwani - Kibaha, if in possession.
5. The applicant to report once every month to the RCO Kibaha or upon a schedule provided by the said RCO.
6. The applicant should appear before the court on the specified date and time as scheduled by the Resident Magistrate of the Resident Magistrate's Court of Coast Region at Kibaha. 5
7. Verification of sureties and bond documents for the applicant shall be approved by the Resident Magistrate in Charge of the Resident Magistrate's Court of Coast region at Kibaha, before the applicant is released on bail. 6

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