

TANZANIA / JUDGMENT

salum kayanda kakulu and 1 another vs republic 2020 tzhc 4318 15 december 2020

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TZHCDECIDED
15 December 2020

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA AT TABORA MISC. CRIMINAL APPLICATION No. 40 OF 2020 (Originating from Economic Crime Case No. 49 of 2020 before Resident Magistrate Court for Tabora) SALUM KAYANDA KAKULU----- 1st APPLICANT SALUM RAJABU KANOGE..... 2nd APPLICANT VERSUS REPUBLIC----- RESPONDENT

RULING

23/11 & 15/12/2020 BAHATI, J. The applicants SALUM KAYANDA KAKULU and SALUM RAJABU KANOGE made this application to this court under Certificate of Urgency seeking the orders of this court on the following prayers:-

1. This honorable court be pleased to grant them bail pending the hearing of Economic Crime Case No. 49 of 2020
2. That this Honorable Court be pleased to give any other order fit to grant. According to the Chamber summons filed in this court the application was instituted under section 29(4) of the Economic and Organized Crimes Control Act Cap.200 [R.E 2019]. i The application is supported by an affidavit of Amosi Japhet Gahise learned counsel for the applicants. When the application came for hearing the applicants enjoyed the services of Amosi Japhet Gahise whereas the respondent Republic was represented by Mr. Tito Mwakalinga, learned State Attorney. Submitting in support of the application, Mr. Gahise told this court that, the applicants have never missed the case during committal proceedings and the offence which the applicants' stands charged is bailable so staying in prison is contrary to freedom of movement which is stipulated under Article 17 of the Constitution of the United Republic of Tanzania, Cap.2. Further, the applicants have never jumped bail and they can come to court when called for hearing, they are ready to follow orders/ conditions set by this court. Responding, the learned State Attorney supported the application and went further to state that, the offence which the applicants stand charges is Economic Offence and the alleged trophies amount to TZS 34, 875,000/= which is above ten millions. According to section 29(4)

- (d) the court with jurisdiction to grant bail is the High Court although in chamber summons this application is made under section 29(4). 2 Having heard both parties, the issue for determination is whether the applicant is released on bail pending the determination of the criminal charges against them. The law presumes that an accused person is presumed to be innocent until proved guilty by a competent court with competent jurisdiction and or until such accused pleads guilty to the charge voluntarily. Bail is granted to an accused person to ensure that he appears to stand trial without the necessity of him being detained in custody in the meantime. The effect of bail is merely to release the accused from physical custody but he is still under the jurisdiction of the law and is bound to appear at the appointed time and place. As submitted by the respondent, Section 29 (4) d of the Economic and Organized Crimes Control Act, Cap. 200 [R: E 2019] to which this application is based vests the powers to grant bail to the High Court where the value of any property involved in the offence Charged is ten million or more and section 36(5) (a) of the same Act sets the conditions to be met by the applicants for them to be eligible to be released on bail, it states:- "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 3 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;..." In the affidavit the learned advocate has demonstrated that the applicants are eligible for grant of bail and they have never jumped bail. Bail being a constitutional right to the applicants and basing on the learned advocate's averments in his affidavit. It thus follows that since the charge involves two applicants(accused persons), they have to share the burden under the principle of sharing as demonstrated in by the Court of Appeal in Silvester Hillu Dawi and Stephen Leons Mwambene V the Director of Public Prosecutions, Criminal Appeal No. 250 of 2006(Unreported)(at Dar es Salaam Registry).The fact that the count for which the applicants are charged with carries a subject matter valued TZS 34,875,000/= the said amount should be split into half, that is TZS 17,437,500/= of which can be executed as stated. The amount due for each of the applicant is TZS. 8,718,750/=. I am satisfied that the applicants have met the criteria for the grant of bail pending trial and I hereby grant the application as prayed on the following bail conditions:- 4
1. Each Applicant must execute a bail bond in the sum of TZS 17,437,500= or immovable property of equivalent value situated within Tabora region.
 2. Each applicant shall have two reliable sureties who will execute a bail bond of TZS. 8,718,750/ =.
 3. Each applicant shall be duty bound to appear in court on all dates that shall be scheduled by the court.

4. The Applicant is restricted from travelling outside Tabora region without prior written consent sought and granted by the Deputy Registrar-Tabora High Court.
 5. The Applicant must surrender his travelling documents to the Regional Crime Officer-Tabora.
 6. The sureties to be approved by the Deputy Registrar-Tabora zone. It is so ordered. A. A. BAHATI JUDGE 15/12/2020 5 Ruling delivered under my hand and seal of the court in the chamber, this 15th day December, 2020 in the presence of the Mr. Deusdedit Rwegira for the Respondent. A. A. BAHATI JUDGE 15/12/2020 6
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