

TANZANIA / JUDGMENT

STANSLAUS RAYMOND MUSHI BAHATI AND 5 OTHERS VS THE REPUBLIC MISC

COURT
TANZLIIDECIDED
1 January 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB-
REGISTRY AT DAR ES SALAAM MISCELLANEOUS CRIMINAL APPLICATION NO. 1120 OF 2025
(Originated from Economic Case No. 352 of 2025) BETWEEN STANSLAUS RAYMOND MUSHI
@BAHATI1ST APPLICANT NEMENCE RAYMOND MUSHI@
HONEST.....2ND APPLICANT ROSE DAVID
NANGA.....3RD APPLICANT HUSSEIN AMOS
MLEZI.....4TH APPLICANT EDWIN ASENKA
MARK.....5TH APPLICANT SALIM KAJIRU
SALEHE.....6TH APPLICANT VERSUS THE
REPUBLIC.....RESPONDENT

RULING

Date of last order: 04/02/2025 Date of ruling: 04/02/2025 A.A. MBAGWA J. This is an application for admission to bail. The applicants have moved the Court by way of chamber summons supported by an affidavit sworn by Mr. Stevens Kosy Madulu, the applicants' counsel. The application has been brought under the provisions of Section 29(4)(d) of the Economic and Organised Crimes Control Act, [Cap. 200 R.E 2022] hereinafter referred to as EOCCA and any other enabling law. According to the applicants' affidavit and the accompanying documents, the applicants were on the 6th day of January 2025 arraigned before the Court of the Resident Magistrate of Kinondoni in Economic Case No. 352 of 2025 on an indictment containing sixty-eight counts. Of particular interest, for purposes of this application, is the sixty-eighth count in which the applicants are jointly charged with the offence of Occasioning Loss to a Specified Authority contrary to Section 284A of the Penal Code, [CAP 16 R.E. 2022] read together with paragraph 38 of the First Schedule to and Sections 57(1) and 60(2) of the Economic and Organized Crime Control Act, [Cap. 200 R.E. 2022]. The particulars of offence allege: STANSALUS RAYMOND MUSHI@ BAHATI, NEMENCE RAYMOND MUSHI @HONEST, ROSE DAVID NANGA, HUSSEIN AMOS MLEZI, EDWIN ASENKA MARK and SALIM KAJIRU SALEHE on diverse dates between 01st day of November 2024 and 30th day of November 2024 at various 2 places within the City and Region of Dar es Salaam, by their willful acts caused Tanzania Revenue Authority to suffer a pecuniary loss of Tanzania Shillings Two Billion One Hundred Sixty Million Three Hundred Ten Thousand Five Hundred Sixty-seven

and Fifty-One Cents (TZS 2,160,310,567.51) being the amount of Value Added Tax. As the matter was registered as an economic case, the subordinate court could not take the applicants' pleas nor could it admit the applicants to bail because the charge involved pecuniary loss of Tanzania Shillings Two Billion One Hundred Sixty Million Three Hundred Ten Thousand Five Hundred Sixty- Seven and Fifty-One Cents (TZS 2,160,310,567.51). This amount is expressly above the amount of Tanzania shillings Three Hundred Million which the subordinate court is vested with jurisdiction to handle in terms of section 29 (4)(d) of the Economic and Organized Crime Control Act, [Cap. 200 R.E. 2022] as amended by section 28 of the Legal Sector Laws (Miscellaneous Amendments) Act, Act No. 11 of 2023. It is against this backdrop the applicants have brought this application before this Court. When the matter was called on for mention on 29th January 2025, 3 Ms. Caroline Assenga, learned State Attorney for the Republic prayed for time to file a counter affidavit. The prayer was not opposed by the adversary side hence this Court granted leave to file the counter affidavit by 31st January 2025. I further adjourned and fixed the matter for hearing on 4th February 2025. However, the respondent did not file the counter affidavit as ordered. On the 4th of February 2025 when the matter was called on for a hearing, Mr. Stevens Kosy Madulu, learned counsel appeared for the 1st, 2nd, and 6th applicants whilst Mr. Majura Magafu appeared for the 3rd and 5th applicants. Besides, Mr. Jacob Minja, learned advocate represented the 4th applicant. On the adversary side, Ms. Caroline Assenga and Ms. Grace Kibaki, learned State Attorneys appeared for the Republic. Submitting on behalf of the respondent/ Republic, Ms. Caroline Assenga, learned State Attorney had it that the respondent did not contest the application. She, however, urged the Court to be guided by the provisions of Section 36(5)(a) of the EOCCA. The learned State Attorney also invited the Court to take into consideration its decision in the case of Kassim Hassan 4 Said Bedue and Another vs Republic, Misc. Economic Cause No. 6 of 2016, HC Corruption and Economic Crimes Division at Dar es Salaam by imposing other additional conditions which it deems fit. In reply, Mr. Majura Magafu, with the consent of other learned counsel for the applicants, submitted on behalf of all the applicants. He elucidated that the mandatory conditions are provided under the provisions of Section 36(5)(a) of EOCCA. Expounding, Mr. Magafu said that it is a mandatory requirement that where the amount of the property with which the applicants are charged exceeds Tanzania shillings ten million, the applicants have to deposit cash or title deed equivalent to the half value of the charged amount. He continued that the law allows that the half amount be distributed among the accused where the offence involves more than one accused. Mr. Magafu clarified that the accused are charged with occasioning loss of TZS 2,160,310,567.51 whose half value is TZS 1,080,155,284.75. He was thus of the opinion that upon dividing TZS 1,080,155,284.75 by the six applicants, each accused/ applicant is required to deposit cash TZS 5 180,025,880.5 or a title deed of immovable property of the same value. In addition, Mr. Magafu beseeched the Court not to impose onerous conditions that are not mandatory under Section 36(6) of EOCCA such as requiring the accused to report to the police station and prohibiting the accused/applicants from visiting certain places or mingling with certain persons. He finally urged the Court to grant the application. I have keenly scanned the applicants' affidavit along with the charge which is attached thereto. I have also given earnest attention to the submissions made by counsel of both sides. Sections 36(4)(e) and 5 (a) of EOCCA, among other conditions, require an applicant to deposit cash or a title deed of an immovable

property equivalent to half the value of the property involved in the charge. In the application at hand, as hinted above, the applicants are charged under the 68th count with occasioning loss of Tanzania Shillings Two Billion One Hundred Sixty Million Three Hundred Ten Thousand Five Hundred Sixty-Seven and Fifty-One Cents (TZS. 2,160,310,567.51) whose half value is TZS 1,080,155,283. It is to be noted that in matters relating to bail, there is an established principle of law commonly known as 'the sharing principle'. This principle allows the accused to share half of the amount charged in respect of bail conditions. Thus, applying the sharing principle as enunciated in the case of *Silvester Hillu Dawi and Another vs the Republic*, Criminal Appeal No. 250 of 2006, CAT at Dar es Salaam, it follows that each of the six applicants/accused has to deposit cash or title deed of the immovable property with the value of TZS 180,025,880/=. In the upshot, I allow the application and admit the applicants to bail on the following conditions:

1. Each applicant has to deposit cash or a title deed of immovable property with the value of TZS 180,025,880/=.
2. Each applicant has to sign a bond of Tanzania shillings Five Hundred Million (TZS 500,000,000/=).
3. Each applicant should bring two reliable sureties to sign a bail bond of TZS 180,025,880/=.
4. Applicants/accused are ordered to appear before the Court on a specified date at a specified time and place whenever needed to do so; 7
5. Applicants/accused are ordered to surrender their passports or any other travel document, if any, to the Court;
6. Applicants/accused are not allowed to travel outside the country without the court's leave.
7. These bail conditions should be approved by the Deputy Registrar. It is so ordered. The right of appeal is explained. Dated at Dar es Salaam this 4th day of February 2025. A.A. Mbagwa JUDGE 04/02/2025 Court: This ruling has been delivered in the presence of Mr. Stevens Kosy Madulu, learned counsel appeared for the 1st, 2nd, and 6th applicants, Mr. Majura Magafu for the 3rd and 5th applicants, Mr. Jacob Minja, learned advocate for the 4th applicant and the applicants in person, on the one side. 8 On the other side, Ms. Caroline Assenga and Ms. Grace Kibaki, learned State Attorneys appeared for the respondent/Republic on this 4th day of February 2025. A.A. Mbagwa JUDGE 04/02/2025 9

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