

TANZANIA / JUDGMENT

Yusta Misc Criminal Application No 26507

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THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA CONSOLIDATED MISCELLANEOUS CRIMINAL APPLICATION NOS.
26507, 26167, and 26508 OF 2024 (Arising from Economic case No.25919/2024 before the Resident
Magistrate's Court of Mwanza at Mwanza)

1. YUSTA MANDIRO EDWARD @ YUSTAR MADILO EDWARD
2. THADEI MTINDO MAPUNDA
3. FARIDA KASSIM SELEMAN APPLICANTS
4. MILEMBE PAUL MCHELE
5. THERESIA JOHN HANGO VERSUS THE REPUBLIC
RESPONDENT

RULING

23rd September 2024 CHUMA, J. The applicants in this application are preferred under Section 29(4) (d) and Section 36(1) of the Economic and Organized Crime Control Act. [Cap 200 R.E 2022] (henceforth EOCCA) is seeking the indulgence of this court for a grant of bail pending the trial of Economic Case No. 25919/2024, before the Court of Resident Magistrate of Mwanza at Mwanza. The application is supported by an affidavit of the applicant's learned counsel. 1 When the application was placed before me for hearing, the applicants enjoyed the legal service of Mr. Chiwalo Nchai Samwel, Maende Chacha, and Baraka Dishon Learned Advocates while Ms. Jaines Kihwelo and Mr. Mahembega Mtiro State Attorney represented the Republic. In support of the application, Mr. Chiwalo's advocate at first instance prayed adoption of the affidavits to be party of their submission and court record. Briefly, Mr. Chiwalo submitted that the applicants as per chamber summons are seeking this court to grant bail pending trial of Economic Case No. 25919/2024 before the Court of Resident Magistrate of Mwanza at Mwanza. And any other reliefs this court may deem fit to grant. And that the reasons behind this application are well explained in the filed affidavit in paragraphs 3, 4, 5, 7, 8, 10, 11, 12, 13, 14 and 15. They are all facing Economic Case No. 25919/2024 before the Court of Resident Magistrate of Mwanza at Mwanza comprising 129 counts. The involved offences are Forgery, Leading Organized Crime, Embezzlement and Misappropriation, Occasioning Loss to a Specified Authority leading to a 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 /=-). 2 That the offences in dispute are bailable and this court is vested with jurisdiction to pertain to this application. That all parties are from within this court's jurisdiction. The applicants have reliable sureties to stand as sureties of the applicant and are ready to adhere to bail conditions as may be imposed by this court. Applicants are still innocent till when their fate is determined by a competent court hence are eligible for the sought grant of bail. That in no way they will not interfere with the investigation upon the grant of bail. His submission was supported by the case of Suleiman Masoud Suleiman and Aisha Khalfan Soud Vs. R Criminal Application No.10/2020 on page 18 as well as that of Farida Kassim Seleman and four others Vs. R Misc Criminal Application No. 37499 of 2023 at page 4. He finally prayed the sought order under chamber summons be allowed. On his side, Mr. Baraka Dishon's advocate did subscribe to what Mr. Nchai Samwel's, advocate submitted emphasizing that bail is a constitutional right. In the case of Uweni Mkingijagi and two others Vs. R Misc Criminal Appeal No. 1/2020 at page 6 where the case of Patel Vs. R [1971] HCD No. 391 was referred, the court highlighted circumstances or conditions to consider in bail determination. He then 3 requested all five applicants be granted bail pending the determination of the referred economic case. Mr. Maende Chacha advocate while seconding the submission by his fellow advocates referring to the cited case of Farida Kassimu (Supra) stated that the court allowed bail to the same present applicants after being satisfied that the case is bailable. In the instant matter, the offence is bailable and their clients are still innocent. Ms. Jaines Kihwelo in her response principally didn't contest the application for three main reasons; one this court is mandated to pertain to this kind of application, two the offences involved are bailable and three bail is a constitutional right. She however prayed this court consider that the case attracts public interest and the loss involved to ensure that the applicants attend court proceedings before the presiding court. But also requested this court to invoke sections 36(5) (a) to (d) and 36(6) of Cap 200 R.E 2022. And that the cited cases by the applicants' advocates are just persuasive before this court and cannot bind this court in its final verdict. I have gone through this court's records and the respective submissions by both parties. The question for determination is whether or 4 not under the circumstances of this case, the applicants are entitled to be granted bail. 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 account all important factors relating to a grant of 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 all circumstances surrounding the case at hand to reach the right decision that guarantees a proper and just end of the course of justice. The purpose of bail is to temporarily release the applicants pending trial but the test inter-alia in so doing is whether if released on bail would appear in court to take trial. Having scanned and considered the affidavit and oral submissions made by both parties before this court, and bearing in mind the fact the offence is bailable as also conceded by both parties and being convinced that there are enough safeguards to ensure the availability of the applicants 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. 5 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 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 what Section 36(5) of the EOCCA (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/=. However, since the case involves five applicants or accused persons, the amount will be rationed equally among the accused persons under the principle of proportionality explained in Lulu Victor Kayombo and another Vs. R. Misc. Economic Application No 140 of 2021 (Unreported). 7 In the event, I accordingly impose bail conditions as follows: -
 - 1) Each applicant should deposit cash TZS. 201,234,602.143=/ being half the amount of the value of the property as per the charge sheet or 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 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 applicants should not leave the jurisdiction of the Court of Resident Magistrate of Mwanza without its written permission.
- 4) The applicants are mandatorily bound to appear in the presiding court at any time when required until the final determination of Economic case No. 25919/2024.
- 5) That, the applicants shall surrender the passport or any other traveling document to the court presiding over the case and, Where 8 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 9 The ruling delivered in court before Mr. Chiwalo Nchai Samwel, Maende Chacha, and Baraka Dishoni advocates for the applicants, Ms. Jaines Kihwelo and Mr. Mahembega State Attorney for the Republic this 23rd day of September 2024. W.M. CHUMA JUDGE 10

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