

**IN HIGH THE COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**MISCELLANEOUS CRIMINAL APPLICATION NO.2 OF 2022**

(Originating from District Court of Kilwa at Masoko in Economic Case  
No.9 of 2021)

**ABDALLAH MOHAMED LIBISA..... APPLICANT**

***VERSUS***

**THE REPUBLIC.....RESPONDENT**

**RULING**

*Date of Last Order: 24/2/2022*

*Date of Ruling: 28/2/2022*

**LALTAIKA, J.**

This is an application for bail pending trial preferred by the applicant, Abdallah Mohamed Libisa. The application has been made under section 29(4) (d) of the Economic and Organized Crime Control Act [Cap. 200 R.E. 2019]. The application is supported by an affidavit of the applicant affirmed on 13.01.2022. The respondent Republic, on its part, did not file a counter affidavit in opposition of the application.

This application is rooted in the Economic Case NO.9 of 2020 pending before the District Court of Kilwa whereby the applicant is charged with the offence of unlawful possession of government trophy contrary to section 86 (1) and (2) of the Wildlife Conservation Act No.5 of 2009 read together with paragraph 14 of the first schedule to and section 57 (1) and 60 (2) of the Economic and Organised Crime Control Act.

During the hearing of the application, the applicant appeared in person whereas the respondent was represented by Ms. Faraja George, learned Senior State Attorney. In arguing the application, the applicant prayed this court to adopt his affirmed affidavit in support of the application. He also prayed this court to consider Section 29(4). The applicant further submitted that he had been at Kilwa Prison for a long time, since September 2021 and he is sick.

The appellant submitted that his body suffered from stroke in 2000 leading to paralysis in the right part of his body. The applicant stressed that whenever he is in a cold place his health deteriorates further and his partial paralysis condition becomes even terrible. Furthermore, the applicant submitted that all what the prison can do to him is to give him Panadol and Ugali. In conclusion the applicant submitted further that his is a very poor family which is now experiencing even more hardships in his absence.

In response, Ms. George, counsel for the respondent, supported the application. The learned Senior State Attorney went on to submit that Section 29(4)(d) of the EOCCA [Cap. 200 R.E. 2019] empowers this court to grant bail in economic organized crimes whose values exceeds 10 million Tanzanian Shillings. To that end, Ms. George opined, the applicant was justified to approach this court because he is charged under an offence which is economic in nature and the value of the same exceeds Ten Million Tanzanian Shillings.

Having expounded on appropriateness of the application, the learned Senior State Attorney prayed this court to take cognizance of

Section 36(4) (a-f) of the EOCCA which provides guidance on how to grant bail on economic crimes.

The applicant made a brief rejoinder by submitting that; in his opinion, this court is empowered to reduce the conditions alluded to by counsel for the respondent. The applicant went on to submit that he had not been able to harvest anything in the past three years. He prayed for lenience of this court.

Having considered submissions by both sides, I am in agreement with the applicant that bail is a constitutional right particularly in view of Article 13 (6) (b) of the Constitutional of the United Republic of Tanzania of 1977. It is also not disputed that the offence the applicant is charged with at the subordinate court is bailable albeit the value of the government trophy allegedly found in possession of the applicant does not give power to the trial court to grant bail to the applicant.

Notwithstanding the above, it is trite law that the grant (or denial) of bail is subject to conditions laid down by law. It is at this juncture that I agree with Ms. George that this court is empowered by Section 29 (4) (d) of EOCCA to grant bail to the applicant while guided by section 36(4) (a-f) of the Act on the conditions of the bail.

In view of the above the applicant is hereby admitted to bail on following bail conditions: -

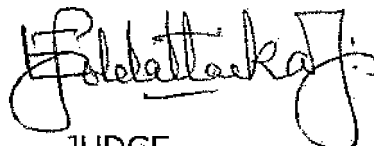
1. The applicant to execute a bail bond of Tshs. 23,000,000/= with Two (2) sureties, each in the same amount.
2. The sureties to produce evidence of possessing immovable property situated at Kilwa District or in Lindi region.
3. The sureties to be reliable and approved by the Deputy Registrar,

Mtwara Zone.

4. The Applicant shall surrender to the OCD of Kilwa District his passport or any other travel documents.
5. The applicant's movements are restricted to Kilwa District unless a written permission is sought from and granted by the presiding Resident Magistrate at Kilwa District Court.
6. The applicant shall appear before the District Court of Kilwa on the dates and times as shall be scheduled by the said District court.

It is so ordered.

E. I. LALTAIKA

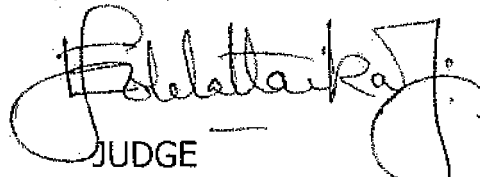


JUDGE

28.02.2022

This ruling is delivered under my hand and the seal of this Court on this 28<sup>th</sup> day of February, 2022 in the presence of Ms. Faraja George, learned Senior State Attorney and the applicant who has appeared in person and unrepresented.

E. I. LALTAIKA



JUDGE

28.02.2022

