

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO. 24 OF 2022

*(Originating from the Resident Magistrate's Court (sic!) of Masasi at
Masasi in Criminal Case No. 15 of 2021)*

HAMZA AFAT VAKINA@MARADONA.....1ST APPLICANT

YUSUPH HAMISI MAKUTI.....2ND APPLICANT

JUMA GODFREY KIHUNGA.....3RD APPLICANT

SWALEHE SALUM ISMAIL.....4TH APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

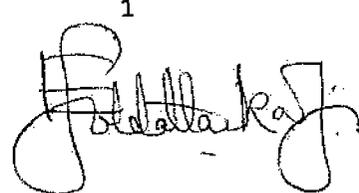
Date of Last Order: 9/5/2022

Date of Ruling: 11/5/2022

LALTAIKA, J.:

The applicants herein Hamza Afat Vakina @Maradona, Yusuph Hamisi Makuti, Juma Godfrey Kihunga and Swalehe Salum Ismail are charged before the District Court of Masasi in Economic Case No.15 of 2021.

It is alleged that the applicants were found with unlawful possession of Government Trophy contrary to section 86(1) and (2)(c)(iii) of the Wildlife Conservation Act No.5 of 2009 as amended by the Written Laws

1


(Miscellaneous Amendment) Act No.2 OF 2016 read together with paragraph 14(d) of the first Schedule and section 57(1) and 60(2) of the Economic and Organised Crimes Control Act [Cap200 R.E. 2019] the particulars of the offence being on the 9th day of November 2021 at Mkuti area within Masasi District in Mtwara Region the applicants were found in unlawful possession of Government trophy to wit, twenty four (24) pieces of Elephant tusks valued at Tanzanian Shillings two Hundred Nine million two hundred fifty thousand (TZS.209,250,000/=) being the property of the Government of United Republic of Tanzania.

The applicants attempt to move this court to admit them to bail is predicated on sections 29(4)(d) and 36(1) of the Economic and Organized Crime Control Act, [Cap. 200 R.E. 2009] as amended by Act No.3 of 2016 and Section 392A(2) of the Criminal Procedure Act [Cap. 20 R.E. 2002]. Pursuant to these sections, the applicants' application is also supported by their sworn affidavits. The respondent Republic, likewise, filed her counter affidavit.

When this matter was called on for hearing, the applicants appeared in person, unrepresented. The respondent, Republic was represented by Mr. Enosh Kigoryo, the learned State Attorney. On the part of the applicants, the second applicant opted to submit first. He stated that bail is a constitutional right and hoped that their prayer would be accepted. The first applicant stated that he had come for bail application pending trial and he too was hopeful that their prayer would be granted. The third applicant submitted that he was praying to be admitted to bail because he has a family and wished he could take part in economic activities. The fourth applicant submitted that it was his prayer that this court admits him and his co applicants to bail so that they could continue with taking



part in building the nation. The fourth applicant submitted further that he had a family and was responsible in ensuring his children went school. He concluded by reminding the court that more details on their application was contained in their affidavit available in the court files.

I reply, Mr. Kigoryo submitted that despite of having filed the counter affidavit, he did not object the application because the offence with which the applicants were charged was bailable. Mr. Kigoryo argued that the applicants are charged with such an offence before the District Court of Masasi. He insisted that Masasi District Court does not have jurisdiction as per section 29(4)(d) of the EOCCA.

The learned State Attorney went on to expound on the jurisdictional aspect by stating that the value of the alleged government trophy is 209,250,000 (two hundred and nine million, two hundred and fifty hundred thousand) which is above 10 million shillings which, the learned State Attorney averred, was above the mark when it comes to jurisdiction of the District Court.

To that wind up his submission, the learned State Attorney argued that should this court find it feasible to admit the applicants to bail, it was his prayer that the court takes into cognizance section 36(5)(a)-(d) of the Economic and Organized Crimes Control Act.

Having dispassionately considered submissions by both parties, I am inclined to decide whether or not to grant the application.

I am not going to take the usual way to determine the merits or demerits of the application. I will only reserve a few lines to give advice to their applicants and those that had provided them with legal assistance. My advice will also touch upon our own court registries and this is aimed



at ensuring that inconveniences are avoided and unnecessary delays in dispensing justice are done away with.

In the course of composing this ruling, it came to my attention that the applicants indicated that they were charged before Masasi Resident Magistrate's Court in Criminal Case No. 15 of 2021. In addition, even the court file I have, features the same wording that this application originates from the Resident Magistrate Court of Masasi in Criminal Case No.15 of 2021. However, the charge sheet annexed to this application shows that the matter is before the District Court of Masasi in Criminal Case No.15 of 2021.

Before I go further, it is imperative to be acquainted with the how a Resident Magistrate's Court is established Tanzania. The Court of Resident Magistrate is established under section 5 of the Magistrates' Courts Act [Cap. 11 R.E. 2019] which reads: -

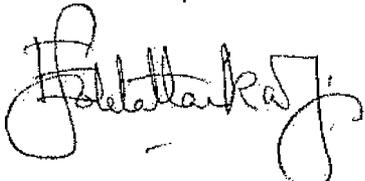
"5. -(1) The Chief Justice may, by order published in the Gazette, establish courts of a resident magistrate which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction in such areas as may be specified in the order.

(2) The designation of a court of a resident magistrate shall be that specified in the order establishing it.

(3) The Chief Justice may, by order published in the Gazette, vary the designation of a court of a resident magistrate or of the area within which that court may exercise jurisdiction.

(4) The variation of the designation of a court of a resident magistrate, or of the area within which that court may exercise jurisdiction, shall not affect the jurisdiction of that court to continue the hearing of, or to determine, any proceeding commenced before it prior to the variation".

I am not aware of any news let alone official information that His Lordship, the Chief Justice of the United Republic of Tanzania has ever

4


ordered establishment of the Court of Resident Magistrate at Masasi. Indeed, my findings are that there is no such creature in the United Republic of Tanzania. However, I am aware of the District Court of Masasi which is situated at Masasi.

Since there is no such court styled as the Resident Magistrate's Court of Masasi, I hold that this application is misconceived and misplaced. This is because, I cannot grant bail to the applicants while there is no court properly so called to execute my orders including bail conditions. I am alive to the fact that this is a technicality and that this court is dutybound to administer justice without being entangled by technicalities. Nevertheless, I see no difference between lack of attention to details and non-adherence to procedural rules. Their consequences are the same. To this end, I advise our legal aid providers as well as court officials charged with admitting documents to pay attention to details. It is an important twenty first century skill through which many inconveniences can be avoided.

All said and done, I hereby strike out this application.

It is so ordered.



E. LALTAIKA

A handwritten signature in black ink, appearing to read 'E. Laltaika', written over a horizontal line.

JUDGE

11.05.2022

A handwritten signature in black ink, appearing to read 'E. Laltaika', written over a horizontal line.

Court:

This ruling is delivered under my hand and the seal of this Court on this 11th day of May,2022 in the presence of Mr. Enosh Kigoryo, learned State Attorney and the applicants who have appeared in person, unrepresented.

E. LALTAIKA



JUDGE

11.05.2022



⁶
