

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)**

AT MTWARA

MISC. CRIMINAL APPLICATION NO. 40 OF 2021

**(Originating from the Resident Magistrate's Court of Lindi at Lindi in
Economic Crimes Case No. 5 of 2021)**

MIKIDADI MOHAMED MKALALA.....1ST APPLICANT
MT91203 CPL WILSON PETER MKALALA.....2ND APPLICANT
MT90921 CPL OBEID JOHN MWAKATOBE.....3RD APPLICANT
ABDUL HEMED KOLELA.....4TH APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

14th & 15th Dec., 2021

DYANSOBERA, J.:

The applicants herein are charged before the Court of a Resident Magistrate of Lindi at Lindi in Economic Crimes Case No. 5 of 2021 with unlawful possession of government trophy contrary to Section 86 (1) and (2) (C) (iii) of the Wildlife Conservation Act, Act No.5 of 2009 as amended by Written Laws (Miscellaneous Amendments) (No. 2) Act of 2016 read together with paragraph 14 of the First Schedule to and Sections 57 (1) and 60 (2) and (3) of the Economic and Organised Crime Control Act [Cap 200 R.E. 2019]. The particulars of offence allege that the

quadruple, on 14th day of November, 2021 at Mbonde Area within Liwale District in Lindi Region were found in possession of Government trophy to wit; Thirty Six (36) pieces of Elephant Tusks valued at Tanzania Shillings Three Hundred Forty Five Million One Hundred and Fifty Thousand (TZS 345, 150,000/=), being the property of the Government of the United Republic of Tanzania without permit from the Director of the Wildlife.

Although this is a bailable offence, but owing to the fact that the subordinate court lacks jurisdiction to grant bail, the applicants have, by way of chamber summons supported by an affidavit, filed this application before this court seeking to be admitted to bail. The application has been made under section 29 (4) (d) of the Economic and Organized Crime Control Act (Cap. 200 R.E. 2019) and Sections 148 (3) and 392A (1) and (2) of the Criminal Procedure Act [Cap. 20 R.E. 2019]. The application is supported by an affidavit of the 1st applicant, Mikidadi Mohamed Mkalala who has been authorised by the 2nd, 3rd and 4th applicants to affirm it for and on their behalf. The respondent Republic has not filed a counter affidavit in opposition of the application. The application has been filed under a certificate of urgency.

During the hearing of this application, the applicants are represented by Mr. Norbert Rainery Songea, learned Advocate whereas Mr. Lugano Mwasubila, learned State Attorney stands for the respondent.

I have considered the affidavit filed in support of the application, the submissions by both the learned State Attorney and learned Counsel for the applicants.

I have also taken into account the following pertinent factors. First, bail is the accused's constitutional and legal rights though the grant or refusal thereof is within the discretionary powers of the court. Second, the offence the applicants are facing is bailable. Third, the applicants have, in the affidavit undertaken to abide by the bail conditions and secure reliable sureties and fourth, there is no suggestion that the applicants are flight risk and it has been demonstrated that they are ready to answer to their bail and take their trial.

Since this application for bail has not been resisted by the respondent in the sense that the averments in the affidavit filed on behalf of the applicants have not been controverted, I grant the application and order that the applicants be admitted to bail upon fulfilling the following conditions:-

1. Each applicant shall deposit in court cash Tanzanian Shillings Forty Three Million, One Hundred Forty Three Thousand and Five Hundred only (say TZS 43, 143,500/=) or Title Deeds of the property whose value is not less than the above mentioned amount.
2. Each applicant to secure two sureties who must be in possession of introduction letters from their respective local leaders or employers.
3. The sureties to be reliable and approved by the Deputy Registrar of the High Court at Mtwara Registry.
4. The applicants to surrender their passports or any travel documents, if any, to the OCD, Lindi District.
5. The applicants shall not travel outside the local jurisdiction of the committing Court without seeking and obtaining written permission from the Resident Magistrate in charge of Lindi Region.
6. The applicants shall appear before the Court of a Resident Magistrate at Lindi on the dates and times as shall be so directed by the said Court.
7. The Deputy Registrar or the Resident Magistrate in Charge of Lindi, as the case may be, shall ensure that the bail terms and conditions are maintained pending the hearing and determination of the case against the applicants.

It is so ordered.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

W. P. Dyansobera

Judge

15.12.2021

Ruling has been delivered this 15th day of December, 2021 in the presence of Mr. Lugano Mwasubila, learned State Attorney for the respondent as well as Mr. Rainery Songea, learned Advocate for the applicants. The applicants are also present.

A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

W.P.Dyansobera

Judge

