

TANZANIA / JUDGMENT

JOHN MWITA 23

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MUSOMA SUB-REGISTRY AT MUSOMA MISCELLANEOUS CRIMINAL APPLICATION NO. 32497 OF 2024 JOHN MWITA@ TIMAS CHACHA..... 1st APPLICANT THIMAS MWITA CHACHA.....2nd APPLICANT NASHONI AMOS MARWA@NYANGI..... 3rd APPLICANT VERSUS THE REPUBLIC..... RESPONDENT RULING OF THE COURT 04/12/2024 & 05/12/2024 Kafanabo, J.: This is a ruling in respect of an application for bail pending hearing and determination of a criminal session case against the Applicants as shall be scheduled by the Deputy Registrar of this Court. The application is made under sections 148(1) and 392A(1)(2) of the Criminal Procedure Act, Cap. 20 R.E. 2022 (hereinafter referred to as the 'CPA'). The application was brought by chamber summons supported by an affidavit of Mr. Juma David Mwita, a learned advocate. A brief background of the matter is that the Applicants were committed to this Court on 05/11/2024 from the District Court of Tarime (hereinafter the 'committing court') for the alleged offence of 'Attempt to Murder' i contrary to sections 211(a) and 380(1) of the Penal Code, Cap. 16 R. E. 2022 (hereinafter the 'Penal Code'). It is alleged that the Applicants herein on the 20th December 2023, at Kewanja Village within the Tarime District in the Mara Region, unlawfully attempted to cause the death of Mwita Muniko Mwita. The record of the committing court shows that the Applicants were arraigned in court for the first time on 7th June 2024 for the alleged offence of 'Attempt to Murder' contrary to sections 211(a) and 380(1) of the Penal Code in a Preliminary Inquiry Case No. 15512 of 2024. The record of the said Preliminary Inquiry also indicates that the Applicants were admitted to bail by the committing court on 11th June 2024. After the completion of an investigation, committal proceedings were duly conducted on 5th November 2024, and the Applicants were committed to this Court for trial. Upon being committed to this Court for trial their bail was cancelled pending trial before this Court. The Applicants have now preferred this bail application. At the hearing of the application Mr. Juma David Mwita, learned Advocate, entered an appearance for the Applicants, and Mr. Michael Kayombo, learned State Attorney, represented the Respondent. In support of the application, Mr. Mwita submitted that the Applicants are praying for bail pending the hearing and determination of the main case waiting to be scheduled for trial by the Hon. Deputy Registrar of this Court. It was submitted that the Applicants are charged with an offence of 'attempt to murder' contrary to sections 211(a) and 380(1) of the Penal Code. It was 2 also submitted that the bail application is based on two facets; one is the presumption of innocence

and the other is freedom of movement which the Applicants are entitled to unless convicted and sentenced upon proof of the charges levelled against them. Articles 13(1)(b) and 17(1) of the Constitution of the United Republic of Tanzania, 1977 as amended were cited to bolster the submission. The Applicants' counsel also submitted that the offence levelled against the accused is bailable according to law, as it is not among the unbailable offences listed in section 148(5) of the CPA. It was also argued that all the Applicants are residents of Tarime in the Nyakunguru Village and have families. The Applicants had shown that they could be trusted because they were bailed in the District Court of Tarime and did not jump bail or fail to attend court sessions for any reason. Moreover, the Applicants are ready to fulfill the bail conditions as may be required by this Court. Responding to the Applicants' counsel's submissions the learned State Attorney submitted that they reviewed the record of the District Court of Tarime and are satisfied that all the Applicants were attending court after being admitted to bail and they posed no challenge in that respect. It was thus his submission that in the interest of justice, and since the offence with which the Applicants are charged is bailable, the Court be pleased to admit the Applicants to bail on the conditions that will enable them to attend court without fail. After the learned counsels for the parties have made their submissions as regards the application before the Court, and which submissions incline 3 in favour of the application, this court is therefore called upon to determine whether the Applicants deserve to be admitted to bail according to law. Making this ruling brief, it is not in dispute that subject to relevant laws, bail is a constitutional right under article 13(6)(b) of the Constitution of the United Republic of Tanzania of 1977 as amended; and that the Applicants are presumed innocent until proven guilty. It is also clear that the offence of 'attempt to murder' which the Applicants are charged with is bailable under section 148(1) of the CPA. Further, in light of the facts deposed in the affidavit supporting the application which were not controverted by the Respondent, and the submissions made by both learned counsels for the parties, it is not in dispute that the Applicants were admitted to bail by the committing court and they did not violate the bail conditions. Therefore, in terms of section 148(1)(6)(7) of the Criminal Procedure, Act, Cap. 20 R.E. 2022, and Articles 13(6)(b) and 17 of the Constitution of the United Republic of Tanzania, 1977 as amended this Court is satisfied that:

- i. The offence in respect of which the Applicants have been committed for, to this court, is of 'Attempt to Murder' contrary to sections 211(a) and 380(1) of the Penal Code, which is bailable under the law.
- ii. Under the Constitution of the United Republic of Tanzania, 1977 as amended, bail is a constitutional right and there is no legal basis to deny the same in the present case.
- 4 iii. The Applicants did not violate bail conditions as granted by the District Court of Tarime in the Preliminary Inquiry Case No. 15512 of 2024. In light of the foregoing, the application for bail pending hearing and determination of a Criminal Session Case on the offence of 'Attempt to Murder' contrary to sections 211(a) and 380(1) of the Penal Code is allowed. Therefore, taking into account the nature of the offence alleged to have been committed by the Applicants against the victim, the Applicants are admitted to bail subject to the fulfillment of the following conditions:

1. Each Applicant must sign a bail bond to the tune of Tanzanian Shillings Three Million Only (3,000,000/=);
2. Each Applicant must register two (2) reliable sureties and each surety shall execute a bail bond of Tanzanian Shillings Two Million Only (2,000,000/=).
3. Each surety must have a national identification card issued by the National Identification Authority (NIDA), or if they are employed in the Government of the United Republic or any other reputable/trustworthy employer, they must register their employment identification cards plus introduction letters from their current employer(s) to the Hon. Deputy Registrar of this Court at Musoma Sub-Registry. Identity cards to be submitted must be original accompanied by certified copies of the same. Upon satisfaction of their authenticity, the original identity cards shall be returned to the bearers; 5
4. The sureties must be residents of the Mara Region and should verify their residence in the region by presenting introduction letters from their respective local government leaders to the Hon. Deputy Registrar of this Court at Musoma Sub-Registry;
5. The Applicants should not exit Mara Region without prior written permission of the Hon. Deputy Registrar of this Court at Musoma Sub- Registry.
6. If the Applicants or any of them possess a passport or any other traveling document, he must surrender the same to the Hon. Deputy Registrar of this Court at Musoma Sub-Registry;
7. The Applicants must report to the Hon. Deputy Registrar of this Court at Musoma Sub-Registry on the first Tuesday of every month, and shall sign a specific attendance register; if the day on which he is required to report is a public holiday he shall report on the next working day.
8. Given the nature of the allegations against the Applicants, he is ordered to abstain from visiting the premises and locality within which the victim of his alleged actions live and, except in the presence of law enforcement agencies and where safety is guaranteed, the Applicants shall, by all means necessary, keep a safe distance between him and the victim whenever they cross paths.
9. Each surety must register with the Hon. Deputy Registrar of this court at least one mobile phone number registered to his/her name by the telecom networks available in Tanzania and reachable twenty-four hours every day. 6
10. The Applicants' sureties shall undertake to make sure that the accused person is available and enters an appearance in court whenever required. The bail conditions listed in this ruling are to be administered by the Hon. Deputy Registrar of this Court at Musoma Sub-Registry. Once bail conditions are satisfied, the Applicants are reminded to make full adherence/compliance to the court's appearance whenever required to do so by the court, otherwise, the bail shall be cancelled. Further, the accused shall remain in custody until

released on bail by the Hon. Deputy Registrar of this court at Musoma Sub-Registry, upon fulfillment of the above-stated conditions. It is so ordered. Right of appeal explained. The ruling was delivered today in the presence of Mr. Juma David Mwita, Advocate for the Applicants, and in the absence of the Respondent who was aware of the ruling date. K. I. Kafanabo Judge 05/12/2024 7

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