

TANZANIA / JUDGMENT

MACHELA MGENDI v

COURT
TANZLIIDECIDED
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MUSOMA SUB-REGISTRY AT MUSOMA MISCELLANEOUS CRIMINAL APPLICATION NO. 22679 OF 2024 MACHELA MAKINE MGENDI@BONIPHACE.....APPLICANT VERSUS THE REPUBLIC.....RESPONDENT RULING OF THE COURT 20/08/2024 & 20/08/2024 Kafanabo, J.: This is a ruling in respect of an application for bail pending hearing and determination of a Criminal Session Case No. 000017992 of 2024 pending in this court for trial. The application was made under sections 148(1) and 392A(1)(2) of the Criminal Procedure Act, Cap. 20 R.E. 2022. Moreover, the application is brought under a certificate of urgency. The application was brought by chamber summons supported by an affidavit of Ms. Mary Samson, Advocate. A brief background of the application is that the Applicant was committed to this court on 12/08/2024 from the District Court of Tarime for the alleged offence of 'attempt to murder' contrary to section 211(a) and 380(1) of the Penal Code, Cap. 16 R. E. 2022. 1 Moreover, it was alleged that the Applicant herein on the 24th day of October 2023, at Waigita Village within the Tarime District in the Mara Region, unlawfully attempted to cause the death of Werema Ryoba Werema. The record of the court shows that the Applicant was arraigned in the District Court of Tarime for the first time on 20th March 2024 for the offence of 'attempt to murder' contrary to section 211(a) and 380(1) of the Penal Code, Cap. 16 R.E. 2022 in a Preliminary Inquiry Case No. 7525/2024. The record of the said Preliminary Inquiry also indicates that the Applicant was admitted to bail on 20th March 2024. After the completion of an investigation, committal proceedings were duly conducted on 12th August 2024, and subsequently, the bail granted to the Applicant was cancelled by the committing court. The Applicant being remanded currently, has made this application for bail. At the hearing of the application, the Applicant was duly represented by Ms. Mary Samson, Advocate. The Respondent was ably represented by Ms. Natujwa Bakari and Ms. Damari Nyange, the learned State Attorneys. In support of the Application, the learned advocate submitted that on 20th March 2024, the Applicant was arraigned in the District Court of Tarime, at Tarime on the charge of 'attempt to murder' contrary to section 211(a) and section 380(1) of the Penal Code, Cap. 16 R.E. 2022 in the Preliminary Inquiry No. 7525 of 2024. On the date of the arraignment, that is 20th March 2024 the Applicant was admitted to bail because the investigation was incomplete. Nevertheless, on 12/08/2024 the investigation was complete, and committal proceedings were duly conducted, the 2 Applicant was committed to this Court for trial. However, the Applicant's bail was cancelled, and the Applicant, currently, is being detained at the Tarime Prison. It was further submitted that

the offence in respect of which the Applicant is charged is bailable under the law, and bail is a constitutional right of the Applicant. Besides, all the time when the Applicant was out for bail he did not violate the bail conditions as imposed by the committing court. Under the circumstances, it was prayed that the Applicant be admitted to bail until the main case against the Applicant is heard and determined by this court. In reply submissions, Ms. Natujwa Bakari, the learned State Attorney, submitted that the Respondent does not oppose the application for bail because the offence in respect of which the Applicant is charged, is bailable. The Applicant also observed all the bail conditions as prescribed by the committing court during the preliminary inquiry. It is also clear that the Applicant demonstrated good character and that he can observe bail conditions. It was also submitted that if the Court is pleased to admit the Applicant to bail then, amongst other conditions, the Applicant should be required to report at least once a month in the District Court of Tarime, at Tarime in order to track his presence in the district, and in order to ensure that he attends court as per the order of the Court. Having heard the parties' submissions which, generally, support the application before the Court, this court is therefore called upon to determine the application according to law. 3 A starter in determining the present application is that it is not in dispute that 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 Applicant is presumed innocent until proven guilty. Therefore, unless proved to the contrary, the Applicant is entitled to enjoy bail subject to the conditions to be imposed by the Court according to the relevant law. Further, it is also evident from the record that the Applicant was granted bail on 20/03/2024, whose conditions he adhered to until the bail was cancelled by the District Court of Tarime upon committing the Applicant to this court for trial. It is also not in dispute that the offence of which the Applicant is charged is bailable under section 148 of the Criminal Procedure Act, Cap. 20 R.E. 2022. In the light of the facts stated in the affidavit supporting the application which were not refuted by the Respondent, and the submissions of both parties in respect of which the Respondent supported the application before the court, and 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 of 'attempt to murder' contrary to section 211(a) and 380(1) of the Penal Code, Cap. 16 R. E. 2022 in respect of which the Applicant has been committed for, to this court, is bailable under the law. 4 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. iii. The Applicant adhered to all the bail conditions as imposed by the District Court of Tarime on 20/03/2024 before being committed to this court for trial on 12th August 2024. The Applicant thus demonstrated his trustworthiness. In light of the foregoing, the application for bail pending hearing and determination of Criminal Session Case No. 000017992 of 2024 is hereby allowed. Consequently, taking into account the nature of the offence alleged to have been committed by the Applicant against the victim, the Applicant is admitted to bail subject to the fulfillment of the following conditions:

1. The Applicant must sign a bail bond to the tune of Tanzanian Shillings Three Million Only (3,000,000/=);
2. The Applicant must register two (2) reliable sureties and each shall execute a bail bond of Tanzanian Shillings Two Million Only (2,000,000/=) each and 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 Deputy Registrar of this Court. Identity cards to be submitted must be original accompanied by certified copies of the 5 same. Upon satisfaction of their authenticity, the original identity cards shall be returned to the bearers;
3. 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;
4. The Applicant should not leave Mara Region without prior written permission of the Hon. Deputy Registrar of this Court at Musoma Sub- Registry.
5. If the Applicant possesses a passport or any other traveling document, he must surrender the same to the Hon. Deputy Registrar of this Court at Musoma Sub-Registry;
6. The Applicant must report to the Hon. Resident Magistrate In-charge of the Tarime District Court 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.
7. Given the nature of the allegations against the Applicant, he is ordered to abstain from visiting the premises and locality within which the victim of his alleged actions lives and, except in the presence of law enforcement agencies and where safety is guaranteed, the Applicant shall, by all means necessary, keep a distance of at least Twenty (20) metres between him and the victim whenever they cross paths.
8. 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 6 telecom networks available in Tanzania and reachable twenty-four hours every day.
9. The Applicant's sureties shall undertake to make sure that the accused person is available and enters an appearance in court whenever required to do so. 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 Applicant (accused person) is 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 Applicant shall remain in custody until released on bail by an order of the Hon. Deputy Registrar of this court at Musoma Sub-Registry, upon fulfillment of the above-stated conditions. The ruling was delivered today in the presence of Mr. Felix Mshama, Ms. Natujwa Bakari and Damari Nyange, State Attorneys representing the Respondent, and in the presence of Ms. Mary

Samson Advocate for the Applicant. K. I. Kafanabo Judge 20/08/2024 7

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