

TANZANIA / JUDGMENT

NYAMHANGA WAMBURA MACHAGE MISC

COURT
TANZLIIDECIDED
13 December 2024

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB REGISTRY AT MUSOMA MISCELLANEOUS
CRIMINAL APPLICATION No. 33951 of 2024 REFERENCE NUMBER 202412032000033951 (Arising
from PI Case No 02 of 2023) NYAMHANGA S/O WAMBURA @ MACHAGE..... 1st
APPLICANT LUCAS S/O JOHN..... 2nd APPLICANT VERSUS
REPUBLIC..... RESPONDENT

RULING

13 & 13 December, 2024 M. L. KOMBA The present application was brought by way of chamber summons accompanied by affidavit of Edson Philipo, Advocate. The application followed a cancellation of bail granted to applicants by the District Court of Butiama at Butiama (the committing court) in PI Criminal Case No. 02 of 2023 (the PI case). On the last day of the proceedings, the committing court committed accused persons to this court and cancelled their bail as per this court directives and law. Page 1 of 8 When the application was scheduled for hearing learned minds who appeared for the parties are Mr. Amos Wilson who was Holding brief of Mr. Edson Philipo with instruction to proceed representing both applicants and Ms. Beatrice Mgumba State Attorneys from National Prosecution Office representing Republic. Mr. Wilson submitted that both applicants are under custody and he is praying for bail as per joint affidavit filed by their advocate which he prayed to be adopted. He went on submitting that the offence charged with the applicants is bailable which is act intended to cause grievous harm. From the records, applicants while in District Court were under bail but was cancelled when committed to this court. He prayed for consideration of bail. Ms. Mgumba submitted that while in preparation for hearing they noted that names which appear in committal order differ with names which appear in information which was addressed to Hon. Deputy Registrar. The 1st applicant was committed by three names Nyamhanga Wambura Machage while the 2nd applicant appears as Lucas John but in information he appears as Lucas John Nyagawa. State Attorney was of the position that a person who was committed in Butiama District court is different from that appeared in information. Page 2 of 8 She went on submitting that in case this court will find the documents are correct and find the application is proper, they resist application of the 2nd applicant on the ground that at the committing court he was given bail but he misused his freedom. When perusing untyped proceedings it revealed that surety reported informing the committing court that applicant has a sick person but later on surety said he don't know whereabouts of applicant and the arrest warrant was issued. Applicant was latter on taken to court

by police and was under police supervision. That means, she said 2nd applicant misused his freedom when he was granted bail and prayed the 2nd applicant not to be considered. During Rejoinder, by Mr. Amos clarified that applicants are before this court because they were committed by lower court on 10/6/2024 and were ordered to appear in this court. The committal order has names as they appear in this application and the application was based on committal and not information. About objection he submitted that State Attorney did not submit any record basing on her submission that second applicant once jumped bail rather she submitted on mere words of mouth. However, he was of the position that the issue that 2nd applicant behavior was supposed to be recorded in committal. He prayed this court not to consider the objection. Page 3 of 8 I find the offence which constitutes the crime in this application is bailable (act intended to cause grievous harm). I am aware of the Judiciary of Tanzania Bail Guidelines issued by Hon, Chief Justice on 10th September 2020, item 3.2 of the Guidelines, the possibility that accused person may abscond bail, is one of the imperative factors to be considered in granting bail. 1st applicant in this application was under committal court bail and all the time he observed conditions as State Attorney had no reservation on his application and, that entrusted this court to consider the application. However, the 2nd applicant application was objected. It should further be noted that if the offence is bailable, then, bail condition set must be reasonable unless for the serious offence or notorious applicant, where the condition must be stiff. Failure to fulfil conditions set, applicant will be deprived of his liberty. See Francis Davis Mchacky & Ten Others vs Republic, Misc Criminal Application No. 14 of 2022; Salum Abeid Mbaya & Ten Others vs Republic, Consolidated Misc. Economic Application Nos. 68 & 69 of 2019 and Prof. Costa Ricky Mahalu & Another vs Attorney General Mis Civil Cause No. 35 of 2007. Guided by Bail Guidelines issued by Hon, Chief Justice while noting the law regulating bail under section 148 (1), (6) and 7 of the Criminal Procedure Page 4 of 8 Act, Cap 20 [R. E. 2022], I have decided to grant bail to the applicants. However, in order to be released from custody, the applicants must fulfil the following conditions: FIRST APPLICANT CONDITIONS

1. Applicant have to sign bail bond to the tune of Tanzanian Shillings Three Million Only (3,000,000/=);
2. Applicant have to register two (2) reliable sureties who are able to execute bail bond amounting to Tanzanian Shillings One Million Only (1,000,000/=) each and must be in possession of National Identification Card or NIDA Number issued by the National Identification Authority (NIDA) or government employee in possession of work identification card;
3. The sureties must be residents of Mara Region and must verify their stay in Mara Region by presenting introduction letters from their respective hamlet or street chairpersons;
4. Applicant should not leave Mara Region without prior written permission of the Deputy Registrar of this court; Page 5 of 8
5. The Applicant must report to the Deputy Registrar of this court once on every last Monday of every Month;

6. The reliability of the applicant's sureties shall be examined by the Deputy Registrar of this court. SECOND APPLICANT CONDITIONS
1. Applicant should have four sureties, and two must be employee of the Government, Local Government or Government Agency and must be resident within Mara region;
2. Each surety shall sign a bond of sum of Tanzanian Shillings three Million Only (3,000,000/=) as a security for appearance of the respective applicant in court. One surety must have immovable property within Mara Region.
3. The sureties must be residents of Mara Region and must verify their stay in Mara Region by presenting introduction letters from their respective hamlet or Street chairpersons;
4. Each surety should submit application letters and certified copies of identity cards from their respective employers and NIDA cards together with a letter from street leaders for unemployed sureties; Page 6 of 8
5. Each surety shall undertake to make sure that applicant is available and enter appearance in court whenever required;
6. The applicant shall report to the Deputy Registrar of this Registry every Monday of every 14 days and sign a specific register to prove his attendance;
7. Applicant shall not travel out of Mara Region without prior written leave of the Deputy Registrar of this Registry;
8. Applicant must enter appearance in court on every date when the case is scheduled for mention, hearing or any other order or direction of the District or High Court;
9. Applicant shall deposit cash in sum of Tanzanian Shillings One Million Only (1,000,000/=) or shall deposit immovable or movable property, either title deed supported by Valuation Report from the Government Valuer or documents justifying the approved property from the appropriate authority displaying equivalent or of more value than amount of money cited above;
10. The reliability of the applicant's sureties shall be examined by the Deputy Registrar of this court. Page 7 of 8 The above ordered bail conditions for both applicants shall be supervised and sureties certified by the Deputy Registrar of this Registry. Ordered accordingly. K M. L. KOMBA JUDGE 13 December 2024 Ruling delivered in chambers under the seal of this court in the presence of the applicants and their learned counsel Mr. Amos Wilson and in the presence of the learned State Attorney, Ms. Beatrice Mgumba State Attorney for the Republic. M. L. KOMBA JUDGE 13 December 2024 Page 8 of 8

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