

TANZANIA / JUDGMENT

CRIMINAL APPLICATION SAMWEL GIRISHON SONDE

COURT
TANZLII

DECIDED
5 September 2024

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IN THE HIGH COURT OF TANZANIA MUSOMA DISTRICT REGISTRY AT MUSOMA MISC.
CRIMINAL APPLICATION NO. 000026440 OF 2024 REFERENCE NUMBER 202409132000026440
(Arising from PI Proceedings Case No. 202407052000018475in the District Court of Musoma)
SAMWEL GIRISHON @ SONDE..... 1st APPLICANT MUSA
ZAKARIA..... 2ndAPPLICANT ZAKARIA
MUSA..... 3rdAPPLICANT MJINJA KASENYI @
CHIKWAKALA..... 4thAPPLICANT KATEGA KAMOGA @
MLEGE.....5thAPPLICANT KATEGA ELEMIA @
MASOKONYA..... 6thAPPLICANT MAFURU FREDRICK
MGINI..... 7thAPPLICANT MKOI
PHINIAS..... 8thAPPLICANT MUHINDI
SIMITI @ SUMUNI..... 9thAPPLICANT GALANI IBRAHIM
@ TEDY..... 10th APPLICANT VERSUS
REPUBLIC..... RESPONDENT

RULING

igth & lgth November, 2024 M. L, KOMBA.: This is a ruling in respect of the application for bail by above mentioned applicants. The application was brought by way of chamber summons Page 1 of 6 made under section 392(A)(1) and (2) section 148(1) and (4) of the Criminal Procedure Act, Cap 20 R.E 2022 while accompanied by joint affidavit of all applicants. Briefly, on 05th September, 2024, the applicants were arraigned before the District Court of Musoma and were committed for trial to this court for an offense of Attempted to Murder contrary to Section 211(a) of the Penal Code Cap. 16 R.E 2022. Knowing bail is their constitutional rights, applicants hired legal service of Advocate Baraka Makowe who appeared and submitted on their behalf. Respondent, the Republic was represented by Ms. Natujwa Bakari, State Attorney. Mr. Makowe submitted that all applicants are under custody and he is praying for bail as per joint affidavit of applicant which he prayed to be adopted. He went on submitting that the offence charged with the applicant is bailable which is attempt to murder. From the records, applicants while in District Court were under bail and as per their affidavit under paragraph 2 they observed bail conditions all the time till Page 2 of 6 05/09/2024 when they were committed to this court and District Court bail ended.

He prayed for consideration of bail. Ms. Natujwa for respondent did not have much to submit after she registered their position that the offence charged is bailable and while under lower court all applicants observed bail conditions and leave the rest to court. 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. Apart from guideline above, Article 13 (2) (b) of the Constitution and section 148 (1) of the Criminal Procedure Act are paramount in application like this at hand. Court may give any conditions which thinks fit for interest of justice and accountability of applicants. It should be noted that if the offence is bailable, then, bail conditions set must be reasonable unless for the serious offence, where the conditions 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 Page 3 of 6 Application Nos. 68 81 69 of 2019 and Prof. Costa Ricky Mahalu & Another vs Attorney General Misc. Civil Cause No. 35 of 2007. In the upshot while noting the law regulating bail under section 148 (1),

- (6) and 7 of the Criminal Procedure Act and being aware of the principle of sharing the amount of value of money involved in an offence as was in Francis Davis Mchacky & Ten Others vs Republic, Misc. Criminal Economic Application No. 14 of 2022; I am enthused to grant bail to the applicants. However, in order to be released from custody, the applicants must fulfil the following conditions:
1. Each applicant should have four sureties, and one must be employee of the Government, Local Government or Government Agency and must be resident within Mara region;
 2. Each of the applicant's sureties shall sign a bond of sum of Tanzanian Shillings Five Million Only (5,000,000/=) as a security for appearance of the respective applicant in court. One surety for each applicant must have immovable property within Mara Region.
 3. Each applicant's sureties should submit application letters and certified copies of identity cards from their respective employers Page 4 of 6 and NIDA cards together with a letter from street leaders for unemployed sureties;
 4. Each applicant's sureties shall undertake to make sure that his/ her applicant is available and enter appearance in court whenever required;
 5. Each applicant shall surrender his passport or any other travelling documents, if any, to the Deputy Registrar of this Registry;
 6. Each applicant shall report to the Deputy Registrar of this Registry every first Monday of every month and sign a specific register to prove their attendance;
 7. Each applicant shall not travel out of Mara Region without prior written leave of the Deputy Registrar of this Registry;

8. Each 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. Each applicant shall deposit cash in sum of Tanzanian Shillings Three Million Only (3,000,000/=) or if the applicant decides to deposit immovable or movable property, he/she shall deposit either title deed supported by Valuation Report from the Page 5 of 6 Government Valuer or documents justifying the approved property from the appropriate authority displaying equivalent or of more value than amount of money cited above; The above ordered bail conditions shall be supervised and sureties certified by the Deputy Registrar of this Registry. Ordered accordingly. M. L BA JUDGE 19th November, 2024 Page 6 of 6

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