

TANZANIA / JUDGMENT

zilipa makondoro v republic 2023

tzhc 22865 24 november 2023

COURT
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THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT (MUSOMA SUB
REGISTRY) AT MUSOMA IN THE MATTER OF APPLICATION FOR BAIL PENDING
DETERMINATION OF CRIMINAL SESSIONS CASE No. 63 of 2023 (Arising from the High Court
[Musoma Sub Registry] in Criminal Sessions Case No. 63 of 2023 & the District Court of Rorya at
Rorya in P.I Case No. 11 of 2023) ZILIPA MAKONDORO..... APPLICANT
Versus REPUBLIC..... RESPONDENT

RULING

23.11.2023 & 24.11.2023 Mtulya, J.: Zilipa Makondoro (the applicant) was brought in this court yesterday morning for plea taking and preliminary hearing proceedings in Criminal Sessions Case No. 63 of 2023 (the case) for allegation of attempt to murder George Kaloko (the victim) contrary to sections 211 (a) and 380 (1) of the Penal Code [Cap. 16 R.E. 2022] (the Penal Code). The incident is alleged to have occurred on 6th November 2021 at Bukama Village within Rorya District in Mara Region. After the plea taking and preliminary hearing, the applicant's learned counsel, Mr. David Mwita, raised up and prayed for bail to the applicant pending hearing and determination of the case. In producing relevant materials in favor of the prayer, Mr. Mwita presented three (3) reasons, viz. first, the offence of attempt to murder is bailable under section 148 (1) of the Criminal Procedure Act [Cap. 20 R.E. 2022] (the Act); second, during committal proceedings at Rorya District Court (the district court) in Preliminary Inquiry Case No. 11 of 2023 (the PI), the accused had enjoyed bail without breach of any bail conditions; and finally, the accused is old aged with a bundle of grand-children to take care at her home village. In the opinion of Mr. Mwita old aged villagers, like the accused, may be listed lenient bail conditions, like one (1) village surety verified by the village authorities. Ms. Dotto Banga, learned State Attorney, who had appeared for the Republic, on the other hand did not protest the prayer, but thought that the accused may be ordered to fulfill bail conditions which are appropriate for her to enter appearance during hearing of the case in this court or when called for any other orders. The law regulating bail in applications like the present one, may be brought at the attention of this court orally or in writing (see: section 392A (1) of the Act, Simon Kiles Samwel @ K & Two Others v. Republic, Criminal Session Case No. 50 of 2022 and Emmanuel Nguka @ Anditi v. Republic, Misc. Criminal Application No. 25 of 2023). Regarding bail prayers in cases like the

instant one, the enactment of sections 148 (1), (6) and (7) of the Act is customarily invited. As part of cherishing presumption of innocence and freedom of movements enacted under articles 2 13(6)(b) & 17 of the Constitution of the United Republic of Tanzania [Cap. 2 R.E. 2019] (the Constitution), this court has been granted bail applications, without any hesitation (see: *Maruru Zabron v. Republic*, Misc. Criminal Application No. 24 OF 2023; *Simon Kiles Samwel @ K & Two Others v. Republic* (supra) and *Emmanuel Nguka @ Anditi v. Republic* (supra)). The most recent decision regulating bail conditions in criminal sessions cases of attempt to murder species was resolved on 27th October 2023 in the precedent of *Maruru Zabron v. Republic* (supra). In the precedent, this court had listed six (6) conditions for the applicant to fulfill in order to enjoy freedom of movements. For want of certainty and predictability of decisions emanating in this court, the accused shall face the same. I am aware Mr. Mwita has prayed for lenient bail conditions be listed for the accused as she is a villager and old aged human person. In his opinion, a villager approved by village authorities may suffice to be a surety of the accused. Ms. Dotto on other hand had left it to this court to grant bail attached with appropriate conditions for the accused to appear in the case. I have already indicated in this Ruling that, this court has already put in place a standard practice a month ago, specifically on 27th October 2023. It will be unfortunate to adjust the same for a villager old aged person who is allegedly committed the offence 3 of attempt to murder another human being. It is the offence alleged to have been committed by accused, and not an age or a place of residence. In some cases, in this State, an accused may not enjoy bail at all if because the offence in which he is prosecuted is not bailable. The indicated laws and precedents may not be relaxed if an accused is a villager or old aged. The available practice in this court shows that once a person is charged with bailable offences and register application for bail, he will be granted with conditions. If such person fails to meet the listed bail conditions, he will have no options but to be deprived his freedom of movements. This is not because the offence is not bailable but because he cannot meet the listed bail conditions (see: *Prof. Dr. Costa Ricky Mahalu & Another v. The Hon. Attorney General*, Misc. Civil Cause No. 35 of 2007 and *Amos Jeremiah Kusaja & Eight Others v. Republic*, Misc. Criminal Application No. 29 of 2023). This is a court of law and justice. It is guided by the laws in enactments and precedents. The present application has both the enactment and precedents. They will both be cherished in the instant prayer of bail registered by Mr. Mwita for want of certainty and predictability of the decisions emanating in this court. In the end, I am moved to grant bail to the accused. 4 However, before she enjoys the freedom of movement and presumption of innocence, the applicant must fulfill the following listed conditions:

1. The applicant must sign bail bond to the tune of Tanzanian Shillings Three Million Only (3,000,000/=);
2. The applicant must 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 issued by the National Identification Authority (NIDA) or if he is employed in government services, he must register work identification card;

3. The sureties must be residents of Mara Region and verify their stay in the region by presenting introduction letters from their respective hamlet or mtaa chairpersons;
4. The applicant should not leave Mara Region without prior written permission of the Deputy Registrar of this Sub Registry or Resident Magistrate In-charge of Rorya District Court at Rorya;
5. The applicant must report to the Deputy Registrar of this Sub Registry or Resident Magistrate In-charge of Rorya District Court at Rorya, once on every last Monday of every Month; and 5
6. The applicant must surrender his passport or any other travelling documents to the Deputy Registrar of this Sub Registry or Resident Magistrate In-charge of Rorya District Court at Rorya. The bail conditions set out in this Ruling shall be supervised by the Deputy Registrar of this Sub Registry or Resident Magistrate In-charge of Rorya District Court at Rorya. court in the presence of the accused, Zilipa Makondoro and her learned counsel, Mr. David Mwita, in the presence of learned State Attorney, Ms. Dotto Banga for the Republic. Judge 24.11.2023
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