

IN THE HIGH COURT OF TANZANIA

AT MWANZA

MISCELLANEOUS CRIMINAL APPLICATION NO.119 OF 2000

IN THE MATTER OF AN APPLICATION FOR
BAIL PENDING APPEAL

AND

IN THE MATTER OF CRIMINAL CASE NO. 112 OF 2000

IN THE DISTRICT COURT OF MUSOMA DISTRICT AT MUSOMA

ERASTO NKOMORWA APPLICANT

Versus

THE REPUBLIC RESPONDENT

R U L I N G

NCHALIA, J.

This is an application for bail pending the hearing and determination of criminal Appeal No. 112/2000 which the applicant Erasto Nkomorwa has filed to this court against conviction and sentence in original Criminal case No. 360/2000 of Musoma District court in which the applicant was charged with the offence of disobeying a lawful order c/s 124 of the Penal Code, Cap.16. The applicant was sentenced to 13 months imprisonment without any option to pay a fine. He was dissatisfied with the entire decision of the trial subordinate court, hence his appeal to this court against the whole decision.

Mr. Magongo, learned advocate appeared for the applicant and argued the application. He submitted that although the applicant was convicted on his own plea of guilty, and thus there would be no appeal in law against conviction, yet the appeal against conviction in this particular case arises from the fact that the particulars of the charge were defective in that they merely alleged that the lawful order was given by Mr. Nimrod Lugoye without describing under what authority and official capacity the said Mr. Nimrod Lugoye issued the alleged lawful order. Mr. Magongo cited the decisions of this court in Lawrence Mpinga v.R. 1983

¹⁶⁶
TLR/and Abdallah Yusufu v. R. 1976 LRT No. 57 to support this point. Mr. Magongo further submitted that the applicant's appeal has overwhelming chances of success which factor amounts to a reasonable cause envisaged under section 368(1)(a)(i) CPA, 85 under which this application has been preferred. On this similar point Mr. Magongo cited the decision in Lawrence Mateso v. R. 1996 TLR 118:

Mr. Rwabuhanga, learned State Attorney squarely conceded to Mr. Magongo's submission and the decisions cited in support of this application. Mr. Rwabuhanga did not therefore oppose the application. I, too, am satisfied that this application in the circumstances has substance, I grant it. I order the applicant be released on bail on the following conditions:

- (1) He should execute a bail bond worth 300,000/= with two sureties each in like sum. The sureties be approved by the District Registrar
- (2) The applicant should surrender to the police station at Musoma all or any travel documents he may have in his possession pending the determination of his appeal.
- (3) He should report once monthly at Musoma police station pending the determination of his appeal.
- (4) He should not travel away from Musoma District without prior permission by the District Magistrate at Musoma District court
- (5) He should reside in his usual residential place in Musoma District pending the determination of his appeal.

Bail is granted to the applicant on the foregoing conditions.
Order accordingly.

Sgd: M.D. Nchalla

Judge

1/5/2001

2/5/2001

Coram : M.D. Nchalla, J.

For Applicant :- Mr. Magongo, Advocate - Absent

For Republic: Mr. Timon Vitalis State Attorney

C.C. Bahati

Court: Ruling delivered in court at Mwanza, in the presence of
learned State Attorney only, this the 2nd day of May, 2001.

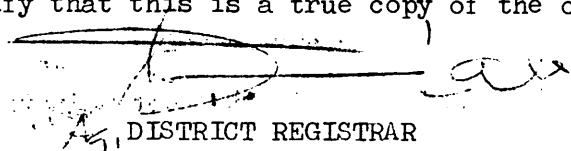
(SGD): M.D. NCHALLA

JUDGE

AT MWANZA

2/5/2001

I hereby certify that this is a true copy of the original.


DISTRICT REGISTRAR

MWANZA