

IN THE HIGH COURT OF TANZANIA

AT TABORA

APPELLATE JURISDICTION

(Tabora Registry)

MISC. CRIMINAL APPLICATION NO. 24 CF 25 OF 2007

ORIGINAL CRIMINAL CASE NO. 345 OF 2007

OF THE DISTRICT COURT OF KAHAMA DISTRICT

AT KAHAMA

BEFORE: J.S.K. HASSAN..Esq., RESIDENT MAGISTRATE

1. PETER S/O NHONJA
2. NHENDEJA S/O LUTONJA }APPLICANT

VERSUS

3. THE REPUBLIC.....RESPONDENT

R U L I N G

14th November, 2007

MUJULIZI, J.

The applicants stand charged with the offence of armed robbery c/ss 285 and 286 of the Penal Code (Cap. 16 R.E. 2002) before the District Court of Kahama in Criminal Case No. 345/2007.

They have come to this court seeking to be granted bail pending trial under Section 148 (3) of the Criminal Procedure Act, (Cap. 20 R.E. 2002). Section 148 (3) provides:

"(3) The High Court may subject to subsections (4) and (5) of this section, in any case direct that a person be admitted to bail or that the bail required by a subordinate court or a police officer be reduced."

Subsection (5) provides:

"(5) A police officer in charge of a police station or a Court before whom an accused person is brought or appears, shall not admit that person of bail if –

(a) that person is charged with –

(i) murder, treason, armed robbery or defilement;"

It is therefore clear from the above provisions, that the right to bail in respect of persons charged with the offence of armed robbery is expressly curtailed.

The powers of this court are therefore limited by that section.

This court has in **MISC. CIVIL CAUSE NO. 117 OF 2004 – JACKSON S/O OLE NEMETEMI @ OLE SIBUI @ MDOSI @ MJOMBA MJOMBA AND 19 others**, held that **Section 148 (5) (a) of the Criminal Procedure Act, Cap. 20. R.E. 2002** is, in relation to armed robbery, violative of Article 15 (2) (a) of the Constitution. However, it has given the Government 18 months from the date of the judgment - since 13th July 2007 to amend the law to ensure that it complies with the Constitution.

Until such amendment is made, or the 18 months elapse, whichever comes first, the provision remains lawful and binding on the courts.

In any event the right of the accused to proceed to the High Court on an application for bail would, in a case triable by the District or other Subordinate Court, inure only after an application has been made to the trial court, and upon refusal or imposition of unreasonable bail terms: Section 148 of the CPA – (Cap. 20 R.E: 2002).

In the circumstances these applications were wrongly brought before this court.

I therefore proceed to strike the two applications from the Register.

The applicants would have to apply first, to the District trial Court and only come to this court either for variation of bail terms or renewal of the application where in a case where bail is available, the trial court, has refused to grant bail.

It is so ordered.



A. K. MUJULIZI

JUDGE

14/11/2007