

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA  
AT ARUSHA**

**MISC. CRIMINAL APPLICATION NO. 37 OF 2018**

*(C/F Criminal Appeal No. 67 of 2018, Originally Decision of District Court of Mbulu in Criminal  
Case No. 186 of 2017)*

**MAGDALENA SULE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

**DR. M.OPIYO, J**

This is an application for bail pending appeal. It has been bought by the applicant MAGDALENA SULE under section 368 (1) (a) (i), (ii) and 392 A (1), (2) and (3) of the Criminal Procedure Act, Cap 20 R.E 2002. (CPA) It is supported by the affidavit of her counsel one QAMARA ALOYCE PETER.

The facts which led to the present application can be summarised as follows, the applicant was arraigned before the District court of Mbulu at Mbulu for the offence of unlawfully possession of traditional liquor contrary

to section 30 of the traditional Liquor (Control of distillation) Act, Cap 384 R.E 2002. She was convicted as charged and sentenced to 12 months imprisonment and to pay fine of Tshs. 200,000/=

After having been convicted and sentenced to imprisonment, she has appealed to this court as she was not satisfied with both conviction and sentence imposed on her. Her appeal is yet to be heard and determined, she is now praying to be released on bail pending the hearing and determination of her appeal.

Before me the appellant was represented by Mr Qamara Learned Counsel while the respondent Republic was represented by Mary Lucas Learned State Attorney.

Mr Qamara argued that, the applicant was charged under Section 30 of traditional liquor control (of Distillation), Act Cap 384 RE 2002 in Criminal Case No. 186/2017 she was convicted on 19<sup>th</sup> of April 2018 to serve jail for 12 months and pay fine of 200,000/=

Mr Qamara further argued that, under Paragraph 3 of affidavit the applicant conviction and sentence was not founded on search warrant authorized by Magistrate thus search was issued by unauthorized Person. This contrary to section 33 (1) of Cap. 384 which requires a Magistrate to issue a warrant of search.

He told this court that, another contradiction is as per requirement of section 32(1) of the same Act which requires the search to be conducted

by a Police Officer not below the rank of inspector or any officer of licencing authority duly authorized. In the proceedings, the search was conducted by unauthorized person.

It was his argument that, the decision is unfounded for failure to call witnesses present during time of search shifting the burden on applicant, failure to analyse evidence, relying on evidence which was full of material discrepancies; failure of proof by Government Chemists that it was traditional liquor and denying applicant to call her material witnesses.

He went on telling this court that, the main reason for the application is stated in paragraph 7 of the affidavit that applicant is a single mother with Six Children younger ones being in standard one, three and four respectively. One being at the University, One at form five and other at home both depending on her for School fees and life necessities, and that if bail is not granted the children and the mother will suffer irreparably.

It is his prayer that bail pending appeal be granted on the ground that appeal has higher chances of success, he referred this court to the case of **Laurence Mateso VR** (1996) TLR 118. In which one of the ground is higher chances of success of the appeal.

The learned State Attorney on her side, didnt object bail based on the point that after going through the trial court they have noted that the whole evidence has a number of doubts not warranting conviction as it did

not prove case beyond reasonable doubt, in that makes the appeal having chances of success once it is heard.

She said, the offence is of being in possession of traditional liquor c/s 30 of Cap 384 but the evidence is based in suspicious as the alleged liquor was not sent to the chemists for proof of the same, the trial court has relied on oral testimony of PW1 and PW2 who stated that they found 6 bottles of Kilimanjaro drinking Water 5 of them filled with traditional liquor these witnesses are Police officers not expert to ascertain if the said liquor and not anything. It was supposed to be proved beyond reasonable doubt that the liquid was traditional liquor to ground conviction such doubt shall be resolved in favour of the accused, see the case of Selemani **Makundi VR** (2006) TLR 200. She said on those grounds she do not object bail.

Section 368 (1) and (2) of CPA which provides for admission to bail pending appeal provides that:

*" (1) After the entering of an appeal by a person entitled to appeal, the High court or the subordinate court which convicted or sentenced such person, may for a reasonable cause to be recorded by it in writing-*

*(a) In the case of a person sentenced to a term of imprisonment, order-*

- (i) *That such person be released on bail with or without sureties pending the hearing of his appeal; or*
- (ii) *That the execution of the sentence appealed against be suspended pending the hearing of his appeal in which case he shall be treated as a remand prisoner pending the hearing of his appeal...."*

One of the tests which is commonly applied by this court in considering application of this nature is whether or not the applicant's appeal has overwhelming chances of success. In the present application the applicant contends that, her appeal has overwhelming chances of success, in support of her assertion she argued that the prosecution failed to prove the offence against her beyond reasonable doubt. One of her major complaint is how the search was conducted and issue of the search warrant.

I am aware that at this stage I cannot delve deep into the merit or otherwise of the grounds of appeal and that in determining the application before me I only need to examine an over view of the grounds that have been presented bearing in mind that to delve deeper may pre empt the hearing of the appeal . From the applicant's grounds and her arguments I find that she has demonstrated that the appeal has high chances of success the fact which was not disputed by Respondent Republic.

surety shall sign a bail bond of Tanzania shillings Five Hundred Thousand (500,000).The reliability of sureties has to be approved by the Deputy Registrar.

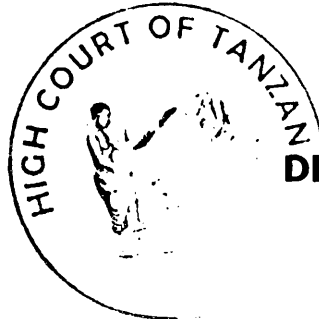
**(SGD)**

**DR. M. OPIYO,**

**JUDGE**

**18/07/2018**

I hereby certify this to be a true copy of the original



*S.M. KULITA*

**DEPUTY REGISTRAR**

**ARUSHA**