

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CRIMINAL APPLICATION NO. 202 OF 2017

*(Originating from the Decision of Ilala District Court in Criminal Case No. 287 of 2015 delivered by
Hon. Kihoja RM dated 14th August 2017)*

SALUM HUSSEIN MKWAWA @ ZUNGU..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

R U L I N G

Date of the last Order 02nd May, 2018

Date of Ruling 04th May 2017

SAMEJI, K. R. J

The applicant herein has filed this Application seeks for the following orders that:-

- (a) That, this honourable Court be pleased to grant bail to the applicant and be released on bail with or without sureties pending the hearing and determination of his appeal;*
- (b) Any other order this honourable Court may deem fit to grant.*

The Application has been brought under Section 368 (1), (a), (i) of the Criminal Procedure Act, Cap. 20 [R.E.2002]. The Application is supported by the Affidavit deposed by the Applicant himself.

At the hearing of this Application, Mr. Abdallah Matumla, the learned Counsel, represented the applicant, while Ms. Florida Wenceslaus, the learned State Attorney represented the respondent, the Republic.

In his submission, Mr. Matumla started by praying the Court to adopt the applicant's Affidavit filed in support of the Application and referred to paragraph 3 of the said Affidavit and *Annex 2* therein. He then submitted that the applicant is seeking for bail because he is sick, suffering from the disease indicated in the *Annex 2*. Mr. Matumla further argued that, the applicant is a student at the Kilimanjaro Institute of Technology and Management KITM, situated at Mwenge, Kinondoni District, as indicated in the *Annex 3* to the Affidavit. Mr. Matumla submitted that, since the applicant is still young and has filed an Appeal before this Court, he may be granted bail pending the hearing of the said Appeal to enable him to attend school and enjoy his education rights. He referred to the case of *Lawrence Mateso V R*, 1996 TLR 118 where Samatta J, as he then was indicated several factors to be considered for the grant of bail. He added that, the offence the applicant was charged and convicted with is bailable. He thus prayed the Court to grant the Application as prayed.

In response, Ms. Florida supported the Application and as well prayed for the same to be granted.

Having perused and considered the submissions by both parties, I am settled that, the main issue before me is, *whether the Application before me is meritorious and whether the applicant has submitted sufficient reasons for this Court to grant the prayers sought in the Chamber Summons.*

It is on record that, the applicant in 2015 was charged with the offence of causing grievous bodily harm to one Diana Oscar by using machete. After a full trial the applicant was found guilty, convicted and sentenced to four (4) years imprisonment term. The applicant was aggrieved by that decision and had lodged an appeal before this Court. While waiting for the determination of his appeal the applicant decided to file this Application praying to be granted with bail pending the determination of the said appeal.

It is well settled principle that, in considering an application for granting bail pending appeal the main issue should be *whether the applicant has submitted **reasonable cause** to enable the Court to*

grant the prayer sought in the Chamber Summons. This is pursuant to section 368 (1)(a) (i) of the Criminal Procedure Act, (supra). The said section provides clearly 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 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..."

It is therefore clear that it is only after **sufficient and reasonable cause** have been adduced, the Court may consider granting a bail pending appeal.

In the case at hand, I have scanned the record of the case and particularly the Affidavit filed in support of the Application and the submission made by Mr. Matumla and I have since failed to glean

therefrom a reasonable cause or sufficient ground to enable this Court to grant the prayer sought in the Chamber Summons.

The main reasons submitted by Mr. Matumla are that the applicant is sick. In accordance with paragraph 4 of the Affidavit and Annexure 2, titled Form No.01 on the Mental Diseases Ordinance from Muhimbili National Hospital indicated that, the applicant is suffering from abnormal behavior characterized with aggressiveness, talking irrelevant words, etc. It is obvious that, the type of such diseases make someone to be a dangerous person in the society, as he can easily injure or harm others. It is also a fact that, within the Prison Management there are proper procedures where prisoners are being well treated and if need be they are referred to referral hospitals such as, Muhimbili National Hospital and others. It is therefore my respectful view that, the applicant being suffering from a mental disorder is not a sufficient reason for this Court to grant bail, as many other prisoners are suffering from the same disease and are being treated within the prison systems. I also find that, due to the nature of the disease the applicant is suffering from, it is safer for the applicant to be handled in the prison cell than in the society. If need be the

Prison Management can as well recommend to the Court to have the applicant be committed to the Mental Institution and not otherwise.

As for the other reason of allowing the applicant to be allowed to enjoy his constitutional rights to education, I must remind the Counsel for the applicant that, since the applicant is now a prisoner he has forego all his rights. The said constitutional rights can only be enjoyed and exercised when one is a free citizen and out of any criminal liability and responsibility. By the way, releasing the applicant on this reason, I will open a *pandoras box*, as many more prisoners who want to go to school may as well apply to be allowed to enjoy the said rights. I am not prepared to take that route and risks.

I must state that, while I do appreciate that, bail is a constitutional right which one cannot be lightly denied, I have as well taken note of the fact that, the applicant is a convicted person and the sentence he was charged with has just started to run and if granted bail may be tempted to abscond at any costs.

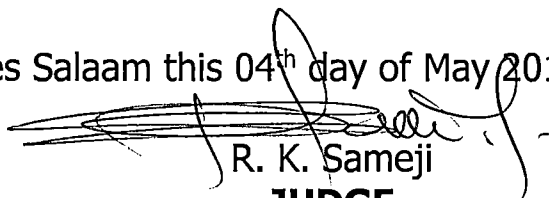
It is also a fact that, the said case pending before this Court is before me and I have already scheduled the same for hearing date. So,

instead of granting bail to the applicant the proper action is to have the appeal heard and determined.

It is therefore my respectful view that, since there are no sufficient reasons submitted to enable this Court to grant the prayers sought, the most appropriate remedy is to fast track the pending appeal to be determined without further delays.

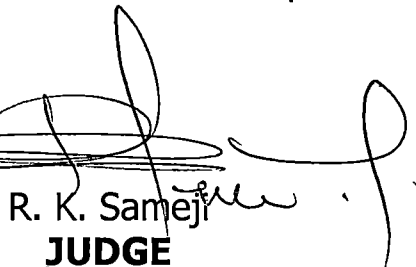
All said, I hold that, this Application has no merit and is hereby dismissed.

DATED at Dar es Salaam this 04th day of May 2018.


R. K. Sameji
JUDGE
04/05/2018

COURT- Ruling delivered in Court Chambers in the presence of Mr. Abdallah Matumla, the learned Counsel for the Applicant and Ms. Florida Wenceslaus, who appeared for the Respondent, the Republic.

A right of Appeal explained.


R. K. Sameji
JUDGE
04/05/2018