

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(KIGOMA DISTRICT REGISTRY)

AT KIGOMA

ORIGINAL JURISDICTION

MISC. CRIMINAL APPLICATION NO. 17 OF 2020

ALLY S/O HAMISI BUGALE.....APPLICANT

VERSUS

REGIONAL POLICE COMMANDER OF KIGOMA REGIONA1ST RESPONDENT

REGIONAL CRIMES OFFICER OF KIGOMA REGION.....2ND RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTION (D.P.P).....3RD RESPONDENT

R U L I N G

20/07/2020 & 20/07/2020

I.C. MUGETA, J.

The applicant is allegedly under the custody of the first and second respondents who are detaining him at Kasulu police station since on 1/7/2020. According to the affidavit, paragraph 4, efforts to have the applicant released on bail or charged in court of law have proved futile. The affidavit, paragraph 3 and 4 further aver that the arrest is based on allegation that the applicant has possession of firearms and he is detained at Kasulu police station on pretext that investigation is ongoing.

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On 15/7/2020, I passed orders that the respondents should file counter affidavits before the hearing date which was scheduled for today. However, no counter affidavit was filed up to the time when the case was called up for hearing. Riziki Matitu, learned Senior State Attorney appeared for the respondents. He reported that he has confirmed that, indeed, the applicant is in custody of the first and second respondents and he instructed them to either charge him or release him which suggestion they have not complied with. On that account, the learned counsel submitted, he has no objection to the application.

On the above submission by the learned Senior State Attorney, Michael Mwangate, advocate for the applicant prayed the court to grant the application as it is unopposed.

The prayer in the chamber summons is that the Honourable court be pleased to issue directions in the nature of Habeas corpus directed to the respondents either by themselves or their agents or their representatives to have the body of Ally Hamis Bugale produced before this court. The second prayer is that the court order the applicant to be released from the unlawful custody of the respondents. The third prayer is that the respondents be prohibited from unlawfully detaining the applicant and to further order them to discharge their duties per the law.

I have read the affidavit and heard submissions by the parties, I wish to state that sometimes cases tell sad stories. This is one of them. We have a situation where the first and second respondents have the applicant in their custody for twenty days now and they have failed to even respect the guide

from the office of the Chief Prosecutor. These are actions which are inconsistent with the rule of law which the courts are enjoined to protect to ensure peace and accountability for the general prosperity of our nation. As this application is urgent, I would end observations on the challenge of failure to comply with the law by those holding the applicant in custody at this so that I address the merits of the application.

The application is made under section 390 (1) and (b) of the Criminal Procedure Act [Cap.20 R.E. 2019] which provides:-

"390-(1) The High Court may, whenever it thinks fit, direct"

- (a) That any person within the limits of the Mainland Tanzania be brought up before the court to be dealt with according to the law.*
- (b) That any person illegally or improperly detained in public or private custody within such limits be set at liberty.*

On record is uncontroverted evidence that the applicant is in police custody since 1/7/2020. Section 32 (1) of Cap. 20 RE 2019 provides:-

" When any person has been taken into custody without a warrant for an offence other than an offence punishable with death, the officer in charge of the police station to which he is brought may, in any case, and shall if it does not appear practicable to bring him before an appropriate court within twenty four hours after he was so taken into custody, inquire into the case and, unless the offence appears to that officer to be of a serious nature, release the person on his executing a

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bond with or without sureties, for a reasonable amount to appear before the court at a time and place to be named in the bond; but where he is detained in custody he shall be brought before a court as soon as practicable”.

In this case, the applicant is in custody and there is no evidence at all as to why it was impracticable to bring him to court within 24 hours after he was taken into custody. On that account his detention became unlawful after expiry of 24 hours from when he was brought into custody on 1/7/2020. For this reason, I find merits in the application and I hereby make the following orders:-

- (i) *The respondents are jointly and together ordered to produce the applicant, without fail, before this court on 21/7/2020 at 14.00 hours to be dealt with in accordance with the law.*
- (ii) *The 3^d respondent to inform the second and the first respondents the existence of this order and the consequences thereof.*

So far, I have dealt with the first prayer in the chamber summons. The rest of the prayers shall be attended after the applicant is brought before the court.




I.C. Mugeta

Judge

20/7/2020

Court: Ruling delivered in chambers before Michael Mwangate, advocate for the applicant and Riziki Matitu, Senior State Attorney for the respondents.

Sgd: I.C. Mugeta

Judge

20/7/2020