

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO.252 OF 2019

(Originating from the Criminal Case No.24 of 2019 in the District Court of Kinondoni at Kinondoni)

1. Gerald Nikasi Mhenga **APPLICANT**

VERSUS

THE REPUBLIC **RESPONDENT**

RULING

Date of Last Order: 17.02.2020

Date of Ruling: 19.02.2020

Ebrahim, J:

Gerald Nikasi has been arraigned at the District Court of Kinondoni at Kinondoni charged with the offence of stealing contrary to **section 258 and 265 of the Penal Code Cap 16 RE 2002**. It is alleged that the applicant had on 22nd day of July 2014 at Ubungo area within Kinondoni District in Dar Es Salaam Region, stole a motor vehicle with Registration

No. T282BGX make Toyota Coaster valued 45,000,000/-, the property of one Rihana Kasim Rajabu.

On 17.01.2019, the trial court availed bail to the applicant with the conditions that he should have two reliable sureties who are close relatives employed by a recognized institution. Those sureties should submit cash amount of Tshs. 45,000,000/- or a title deed of an immovable property equivalent to such amount with valuation report.

The applicant has failed to meet the set bail conditions and has come to this court praying that the bail terms and conditions be varied so that his sureties could manage to fulfill them. The applicant has made the present application under **Section 149 of the Criminal Procedure Act, Cap 20 RE 2002** supported by his sworn affidavit.

When the matter was called for hearing, the applicant who appeared in person un-represented prayed for re-consideration of the bail conditions so that his sureties could meet them. He suggested that he be allowed to be bailed by civil servants and people with national identity.

Ms. Debora Mcharo, learned State Attorney conceded that the bail conditions set by the trial court exceeded the position set by law. She thus

had no objection with the prayers for varying the terms but insisted that the same should conform with the **provisions of section 148(5) of the Criminal Procedure Act, Cap 20 RE 2002.**

The law i.e. **section 149 of the CPA, CAP 20 RE 2002** gives power to High Court in any criminal proceedings where a subordinate court has powers to admit a person to bail; to vary any condition or reduce the amount which the surety was bound to discharge if the said court refuses to grant the same or offers unacceptable terms.

Need I say more that the terms issued by the trial court are contrary to the conditions and bench mark set by the law in granting bail on bailable offences. **Section 148(5)(e), (6) and (7) of the Act** provides for conditions under which bail can be issued where the value of the subject matter exceeds ten millions shillings and the conditions to be imposed thereof. For the purpose of clarity **Section 148(5)(e) of the Act reads:**

*"148(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 to bail if—***
(e) the offence with which the person is charged involves actual money or property whose value exceeds ten million shillings unless that person deposits cash or other property equivalent to half the amount or value of

actual money or property involved and the rest is secured by execution of a bond". (emphasis is mine)

The value of the subject matter that the applicant is charged with is Tshs. 45,000,000/-. It is obvious therefore that the requirement by the subordinate court of depositing the cash amount of the whole value is not proper and the trial magistrate has not even stated the impeding circumstances that led him to issue such kind of condition.


It is imperative that I vary the bail conditions set and I hereby proceed to admit the applicant on bail on the following conditions:-

- (1) That the applicant shall deposit in court a sum of Tshs.22,500,000/- in cash (say Tanzanian shillings Twenty Two Million Five Hundred Thousand only) Or in the alternative shall deposit to the custody of the court, a Title Deed/ leseni ya makazi of the immovable property to the equivalent amount.
- (2) That the applicant shall be required to provide two reliable sureties who shall be required to execute a bond of TZS. 500,000/- each (say Tanzania Shillings Five Hundred Thousands only)and shall ensure the applicant's attendance to court.
- (3) That the applicant shall be duty bound to appear in Court on all dates that shall be scheduled by the Court in Criminal Case No. 24/2019 pending at Kinondoni District Court at Kinondoni.

- (4) That, the applicant shall immediately surrender his passport or any travelling document in his name to the Principal Magistrate In Charge at Kinondoni District Court at Kinondoni.
- (5) That the applicant shall report to the Magistrate assigned with the case at Kinondoni District Court on each first Monday of the month.
- (6) That the applicant is hereby restricted to move outside the jurisdiction of this Court (High Court) without prior permission of the Magistrate assigned with the case.
- (7) Bail conditions to be ascertained/ verified by the Magistrate assigned with the case within 24 hours after issuance of this order.

Accordingly ordered.




R.A. Ebrahim
Judge

Dar Es Salaam

19.02.2020