

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC. CRIMINAL APPLICATION NO. 91 OF 2020

***(Originating from the District Court of Kondoa at Kondoa in Criminal Case
NO. 2 of 2020)***

JUMA SADICK @ TSAWA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

25/08/2021 & 15/09/2021

KAGOMBA, J

JUMA S/O SADICK @ TSAWA applied for an order of this Court to vary the conditions for bail pending the hearing and final determination of the Criminal Case No. 02 of 2020 at Kondoa District Court.

The application has been made by way of a Chamber summons supported by an affidavit of the applicant.

According to the affidavit, the applicant is charged alongside other accused persons, with stealing of certain animals contrary to section 258(1) and 268(1) of the Penal Code [Cap 16 Vol. I R. E 2002]. It is the applicant's argument that since since the District Court had jurisdiction to grant it and did grant bail for conditions set, the power to vary bail conditions vests in this Court.

On the date of hearing the applicant informed the Court that they were given a condition of paying cash or furnish immovable property in Kondoa. He said he does not have relative in Kondoa but could find an immovable property in Dodoma.

On part of the respondent, there was no objection save that he prays for proper procedure to be followed. Mr. Mbogoro for the respondent submitted that since the District Court had already issued a ruling to set bail conditions, the appropriate procedure would be to seek revision in the same District Court and not to file another application.

Having heard the arguments for both sides, It is my considered view that the application before the Court was supposed to come by way of an appeal in terms of Section 161 of the Criminal Procedure Code which provides;

"161. All orders issued under section 148 to 160 by any Magistrate shall be appealable to, and may be reviewed by the High Court".

Alternatively this matter could come to this Court by way of a revision under S. 392A which provides;

"392A (1) Every application under this Act shall be made before a Court either orally or in written form.


(2) An application made in written form shall be by way of chamber summons supported by affidavit.

In light of the above provisions, the applicant had an option of filing his chamber application as he did but citing appropriate provisions including Section 392A and Section 149 of the Criminal Procedure Act.[Cap 20 R. E 2019]

However, knowing that the applicant is in custody and has already been granted bail, and considering that there is no objection from respondent, in the interest of justice as well as the need to achieve the overriding objective of rendering substantive justice, I hereby allow the application to vary the bail conditions as if the application has been brought up under appropriate provision of the law so that the applicant will be allowed to submit documents pertaining to ownership of immovable property located in anywhere within Dodoma region. All other conditions of bail set by the District Court shall remain unchanged and shall be complied with accordingly.

It is so ordered.

Dated at **Dodoma** this 15th day of September, 2021


ABDI S. KAGOMBA
JUDGE