

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**MISC. CRIMINAL APPLICATION NO. 33 OF 2020**

*(Arising from Misc. Criminal Application NO. 0 of 2021 in the High court of Tanzania at  
Dodoma, Originating from Criminal Case No. 01/2021 Bahi District Court)*

**EMMANUEL PAUL MZIWANDA @**

**EMMANUEL MZIWANDA.....APPLICANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**RULING**

09 & 15/09/2021

**KAGOMBA, J**

On 10/2/2021 this Court granted bail to the Applicant following his application vide Misc. Criminal Application No. 09 of 2021 which originated from Economic Case No. 01/2021 of Bahi District Court. The bail was granted subject to the following five conditions:

1. The applicant shall deposit Tsh. 7,500,000/= which is equal to the value of the subject matter stated under count No. 3 in the charge sheet and the balance shall be secured by execution of a bond.
2. The applicant shall have two reliable sureties to be approved by the District Magistrate in charge for Bahi District.

3. The applicant shall be appearing in Court without missing every time his case is scheduled either for hearing or mention.
4. He shall surrender to the Police Station in Bahi his passport or any other travel documents.
5. He is restricted from moving outside Dodoma Region until his case is finalized.

Despite being admitted to bail by this Court as aforesaid, on 25/5/2021 the applicant filed yet another application under section 149 of the Criminal Procedure Act, [Cap 20 R.E 2019] (henceforth "the **CPA**") praying of the order that:

*"this Honourable Court be please varying with bail condition it has set against the application its own decision Misc Criminal Application No. 09 of 2021 of meet the end of justice of the applicant".*

The current application has been made by way of a chamber summons supported by affidavit of the applicant wherein he has stated, among other things, that he is the Accused person in Economic Case No. 01 of 2021 filed at Bahi District Court charged with three (3) counts of use of documents to mislead principal, contrary to Section 22 of the Prevention and Combating of Corruption Act, No. 11 of 2007 and one (1) count of occasioning loss to a specified authority. The last count is contrary to section 10(1) of the first schedule to and section 57(1) and 62 (2) of the Economic and Organized Crime Control Act, [Cap 200 R.E 2019].

The gist of the applicant's application as stated in his affidavit is that while he was granted bail by this Court as per his application, he is unable to

meet the first condition for the bail that requires him to deposit Tsh 7,500,000/= which is equal to the value of the subject matter stated under count No. 3 in the charge sheet and the balance thereof to be secured by execution of a bond. He prays for mercy of the Court so that he can be given an alternative condition to deposit other forms of securities in lieu of the said amount. He therefore seeks for order of this Court to vary bail condition set out in its previous decision.

The Respondent did not file a counter affidavit and it could be for obvious reason. In the previous Misc. Criminal Application of 2021 which came before Hon. Mansoor, J, the Respondent only needed realisable sureties to be put as a condition in granting the bail.

The applicant, in submitting his application, prayed the Court to review the bail conditions it had set previously. He said that he does not have money to deposit in cash and neither does his family.

Ms. Salma Uledi, learned State Attorney representing the Respondent prayed the Court to dismiss the application. She grounded her prayer on non-observance of the proper procedure by the applicant who, she argued, was supposed to seek revision of the lower court's bail conditions, or appeal to this Court against the lower court's decision on his bail conditions. She therefore expressed her views that the applicant was not supposed to file this application for variation of bail conditions, as she did.

Clarifying her position, Ms. Uledi submitted that the Respondent did not object to variation of the bail conditions as prayed provided that the proper procedure, as she had stated it, was followed.

From the above submissions, this Court has to first ascertain whether the application had followed proper procedure before granting the prayer to vary the bail condition.

As stated earlier on, this application has been made under section 149 of the **CPA**. The section under which the application is preferred provides as follows:

*"149. Where in connection with any criminal proceedings a subordinate court has power to admit any person to bail but either refuses to do so or does so or offers to do so on terms unacceptable to him, the High Court may admit him or direct his admission to bail or, where he has been admitted to bail, may vary any conditions on which he was so admitted or reduce the amount in which he or any surety is bound to discharge any of the sureties".*

The cited provision provides for powers of the High Court to vary terms of bail set by lower Courts. In this application, the District Court had no powers to grant bail and the applicant's affidavit stated this fact. What the current application seeks to do is to move the Court to review its order (Hon. Mansoor, J) made on 10/2/21 by varying one of the bail conditions set by this same Court. For further clarity, the order to admit the applicant to bail was not made under the above quoted authority of Section 149 of the **CPA**. This application is supposedly made under section 349A(1) of the **CPA**, which provides:

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


In light of the above provision, the application is rightly placed, save for the non-citing of appropriate provisions of the law, which should include Section 392A and Section 149 of the Criminal Procedure Act.

However, knowing that the applicant is in custody, and has already been granted bail, in the interest of justice as well as the need to achieve the overriding objective of rendering substantive justice, I hereby order that the appropriate provisions be inserted by pen on the application filed in Court.

Having so ordered, I allow the application to vary the bail condition so that the applicant shall be allowed to submit document pertaining to ownership of immovable property located in Dodoma or anywhere within Dodoma Region. All other conditions of bail granted by the District Court shall remain unchanged and shall be complied with accordingly.

It is so ordered.



  
ABDI S. KAGOMBA

**JUDGE**

15/09/2021