

**IN THE HIGH COURT OF TANZANIA  
DODOMA DISTRICT REGISTRY  
AT DODOMA**

**ORIGINAL JURISDICTION**

**MISC. CRIMINAL APPLICATION NO. 11 OF 2021**  
**CHARLES MWAMBUTA.....1<sup>ST</sup> APPLICANT**  
**RENATUS FORTUNATUS MAZIMBA...2<sup>ND</sup> APPLICANT**  
**MICHAEL DAUDI ZUERI.....3<sup>RD</sup> APPLICANT**  
**BENEGO MSEMAKWELI ANDREA.....4<sup>TH</sup> APPLICANT**  
**HAMU HALILI HEMED.....5<sup>TH</sup> APPLICANT**  
**RICHARD JOSEPH SITUPU.....6<sup>TH</sup> APPLICANT**

**VERSUS**

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

**RULING**

**Date: 5<sup>TH</sup> MARCH, 2021**

**BEFORE: HON. LATIFA MANSOOR, J.**

The Six Applicants herein were charged with the offence under the Railway Act, 2017, and the General Rules 1997 of the Tanzania Railway Corporation, under the Penal Code, Cap 16 R: E 2019 and under the Economic and Organized Crime

Control Act, Cap 200 R: E 2019. It is because of the charge under the Economic and Organized Crime Control Act, and the amount of loss involved which is Tshs 584,962,000, the Magistrate Court which tries the matter lacked jurisdiction to entertain an application for bail. It is alleged by the prosecution that the six applicants herein while on duty in Bahi District within Dodoma City, on 2<sup>nd</sup> day of January 2021 as Railways Inspectors and Station Master endangered the safety of the passengers on board of a Train, by negligently failing to inspect the railway line and giving a clear line for the passenger train Number B17 with Engine Number 9004 to pass while there was obstruction of railway, and caused an accident , and which caused the loss to the tune of Tshs 584,962,000. Vide a ruling delivered on 2<sup>nd</sup> February 2021, the Applicants were granted bail on terms; each was ordered to deposit cash amounting to Tshs 48,747,000.00/= with two sureties. The Applicants were aggrieved with the Judge's ruling and brought the instant application under section 161 of the Criminal Procedure Act seeking the High Court to review the conditions of bail and vary them as the applicants are not

in a financial position to deposit cash amount but can deposit Title Deeds of similar values instead of cash.

The application is also supported by a supporting affidavit sworn by all six applicants who deponed that the aforesaid bail amount is exorbitant and beyond their reach and that this it is tantamount to denying them bail which is a violation of their Constitutional rights. Apart from the bail amount being prohibitive, they asserted that the requirement of each of the accused persons to deposit such huge amount of cash which is not within their reach is a sure way of denying them bail.

The question that falls for determination in the instant matter is whether, the High Court is empowered under Section 161 to review its own orders and vary or reduce the bail conditions. This section reads:

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

The High Court has the power to grant bail under Section 39 of the Economic and Organized Crimes Control Act, if the

amount of the offence exceeds Tshs 10,000,000 and when the Trial at the Magistrate Court has not begun. Generally, the power to grant bail is a special power, that is derived from Section 148 of the Criminal Procedure Act, Cap 20 R: E 2002, and the court has no powers, outside of those presented within the four corners of the Criminal Procedure Act. Powers given under Section 148 to 160 of Criminal Procedure Act the court (which includes subordinate courts and High Court) has no inherent power, apart from that placed on it from the Criminal Procedure Act, to grant bail.

However, Section 161 is specific powers of the High Court to review by way of an appeal or Revision in bail proceedings in the magistrate's court. Section 161 of CPA is the high court power to supervise the lower courts about bail matters. This section is clear that if the orders of bail have been issued by the Magistrate, and if a party is aggrieved with such orders, then the High Court can review those orders if such an aggrieved party have made an appeal or have applied for Revision. This section does not give power to the High Court to review its own orders. The suggestion made by Counsel Fred Kalonga for the Applicants is misplaced. When a person

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has been lawfully arrested on a charge for the purposes of criminal proceedings, his right to release on bail until he is sentenced in the trial court is regulated by the Criminal Procedure Act, Cap 20 R: E 2002 (sections 148-160) of the Act. Section 161 of the Act is the High Court's inherent jurisdiction included the exercise of supervisory control over lower court proceedings, and the power to exercise such control can occur only if there is an appeal or Revision of the Magistrate court proceedings or orders.

I therefore sustain the objection raised by Mr. Sarara, the State Attorney, that this application is misplaced, and it is hereby struck out.

**DATED AND DELIVERED AT DODOMA, THIS 5<sup>TH</sup> DAY OF**

**MARCH 2021**



**L. MANSOOR**

**JUDGE**

**5<sup>th</sup> MARCH, 2021**