

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**MSC. CRIMINAL APPLICATION NO. 226 OF 2020**

*(Originating from Traffic Case No. 462 of 2020 before the District Court of Ilala at  
Kinyerezi)*

**SALUM JUMA MSEKA.....APPLICANT**  
**VERSUS**  
**THE REPUBLIC ..... RESPONDENT**

**RULING**

Date of Last Order: 10/3/2021  
Date of Judgment: 17/3/2021

**MASABO, J.:**

By a chamber summon, the applicant Salum Juma Mseka has moved this court to grant him bail pending determination of his appeal, which has been registered in this court as Criminal Appeal No. 277 of 2020. The application is accompanied by an affidavit deposed by the applicant. The affidavit and the court record appended to the application show that on 2<sup>nd</sup> November 2020 before the district Court of Ilala at Kinyerezi, the applicant was, upon own plea of guilty, convicted of careless driving resulting into the death contrary to section 41 of the Road Traffic Act, Cap 168. He was subsequently sentenced to two years imprisonment. His driving license was also cancelled and he was disqualified from obtaining one in the period of two years. Disgruntled he has lodged an appeal before this court challenging the

sentence inflicted on him. The present application is sought pending determination of his appeal.

When the application was called on for hearing the Respondent Republic represented by Ms. Dhamir Masinde, learned State Attorney informed the court that the Respondent has not filed a counter affidavit as it has no intention to object the application. The applicant who appeared in person had nothing to add. He just prayed that his application be allowed.

This being an application for bail pending appeal is governed by section 368.- (1)(a)(i) of the Criminal Procedure Code, Cap 20 RE 2019, which states that:

1. After the entering of an appeal by a person entitled to appeal, the High Court or the subordinate court which convicted or sentenced such person may, for reasonable cause to be recorded by it in writing-
  - (a) in the case of a person sentenced to a term of imprisonment, order-
    - (i) that such person be released on bail with or without sureties pending the hearing of his appeal

This provision has been interpreted in numerous decision such that the position of law is now settled as to when bail pending appeal can be granted. In **Lawrence Mateso v Republic** [1996] TLR p122, which is a land mark authority in this area, it was held that bail pending the hearing of an appeal can only be granted if there are exceptional and unusual reasons or where there is an overwhelming probability that the appeal in question would succeed. In **Radhibir Singh Lamb V.R** (1958) EA 337, it was stated that:

'....the principle to be applied is that bail pending appeal should only be granted for exceptional and unusual reasons. .... Neither the complexity of the case nor the good character of the applicant nor the alleged hardship to his dependants justified the grant of bail.'

Bail pending appeal may also be granted on account of sickness which is not treatable in custody (Hassanali Walji V.R (1968) HCD 174).

In the instant case, the grounds under which the application is premised are stated in paragraph 4 and paragraph 8 of the counter affidavit. In paragraph 4, the applicant has deponed that he has a family which entirely depend on him while in paragraph 8 he has deponed that he is suffering from hernia and he depends entirely on traditional medicine.

When the above principles are applied to this application, it entirely fails because as stated in **Radhibir Singh Lamb V.R** (supra) hardship to the applicant's dependents does not justify the grant of bail. Whereas illness would constitute a good ground for grant of bail pending appeal, it must be established that the illness is not treatable in custody. The application will not be entertained if the disease is treatable in hospital. Addressing this issue in **Hassanali Walji V.R** (1968) HCD 174, this court stated that, an application for bail pending appeal should be dismissed if an illness of the applicant is treatable in custody. In the instant case, whereas it may be true that the applicant uses traditional medicine for treatment of hernia his disease is treatable in custody as it is capable of being treated in hospital.

In the foregoing, it would appear that, the learned State Attorney did not properly direct herself to the principles applicable in similar applications. As hernia is treatable in custody, this application as stated in **Hassanali Walji V.R (supra)**, inevitably fails.

Accordingly, I dismiss it.

Dated at Dar es Salaam this 9<sup>th</sup> day of March 2021.

A handwritten signature in black ink, consisting of a stylized 'J' and 'M' intertwined, with a horizontal line crossing through the middle.

**J.L. MASABO**  
**JUDGE**