

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

MISC. CRIMINAL APPLICATION NO. 39 OF 2021

CHICHI S/O WAMBURA @NYAKITITA WAMBURA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

***(Application for bail pending trial from Criminal Case No. 4 of
2020 of the District Court of Musoma at Musoma)***

RULING

30th and 30th July, 2021

KISANYA, J.:

In this ruling, I am called upon to decide whether the present application for bail pending trial is competent before this Court. In terms of the affidavit in support of the application, the case subject to this matter is pending in the District Court of Musoma at Musoma. In that case, the applicant, Chichi Wambura @Nyakitita Wambura stands charged with an offence of manslaughter, contrary to sections 195 and 198 of the Penal Code [Cap. 16, R.E. 2019].

When this matter was called on for hearing today, I probed the parties to address the Court on its competence. That issue was raised after noting that the records do indicate whether the applicant has been

committed to this Court.

Responding to that issue, the applicant admitted that the offence subject to this application is manslaughter and that case is pending before the District Court. He also confirmed that he has not been committed to this Court.

On his part, Mr. Tawabu Yahya, learned State Attorney who appeared for the respondent informed the Court that the offence preferred against the applicant is murder and not manslaughter.

On my part, the application has been preferred under section 148(1) of the Criminal Procedure Act [Cap. 20, R.E. 2019]. The cited provision empowers subordinate courts to admit accused persons before them to bail for bailable offences. It is now settled that the subordinate courts' power to admit the accused person to bail for bailable offence extends to offences triable by the High Court. Unless the accused person is committed to it, the High Court has no power to grant bail at the stage of committal proceedings. This position was underscored by the Court of Appeal in **DPP vs Dodoli Kapufi and Another**, Criminal Revisions No. 1 and 2 of 2008 (unreported).

In our case, I alive to the position of law that the offence of manslaughter subject to this application is bailable. Therefore, guided by the above position, the District Court of Musoma has power to determine the application for bail pending trial until the applicant is formally and properly submitted or committed to this Court. Now that the applicant has not been committed to this Court, the court of competent jurisdiction to admit him to bail is the District Court of Musoma. It follows that the application is incompetent before this Court.

In view thereof, this application is hereby struck out for being incompetent. The applicant is advised to lodge it in a court of competent jurisdiction.

DATED at MUSOMA this 30th day of July, 2021.




E.S. Kisanya
JUDGE