

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF TANGA)**

**AT TANGA**

**Misc. CRIMINAL APPLICATION No. 15 OF 2021**

*(Arising from the High Court [Tanga District Registry] in Criminal Appeal No. 36 of 2021  
originating from the District Court of Handeni at Handeni in Criminal Case No. 68 of 2020)*

**ATHUMANI MOHAMED MSUKULU ----- APPLICANT**

**Versus**

**THE REPUBLIC ----- RESPONDENT**

**RULING**

30.08.2021 & 31.08.2021

**F.H. Mtulya, J.:**

Mr. Athumani Mohamedi Msukulu (the Applicant) was prosecuted and found guilty for the offence of cattle theft contrary to section 258 (1) & 268 (1) of the **Penal Code** [Cap.16 R.E. 2019] (the Code) by **the District Court of Handeni at Handeni** (the district court) in **Criminal Case No. 68 of 2020** (the case). Being dissatisfied with the judgment of the district court in the case, the Applicant preferred **Criminal Appeal No. 36 of 2021** (the Appeal) in this court.

On 23 August 2021, while awaiting for his appeal to be heard and determined, and noting sick persons who are convicted of bailable offences may apply for bail pending hearing of their appeals in this court, and appreciating he is a lay person in prison custody

after conviction of bailable offence of cattle theft, the Applicant instructed Mr. Mohamed A. Kajembe, learned counsel to file in this court Misc. Criminal Application No. 15 of 2021 (the Application) to pray for bail pending hearing of the Appeal. In the Application, Mr. Kajembe filed a certificate of urgency and chamber summons supported by an affidavit. The certificate of urgency displays the following facts:

*...the Applicant is aged 71 years and diagnosed with partial stroke and heart diseases...is sick at maweni prison and require special attention and care for the time being and he is required to attend clinic in monthly basis at Muhimbili National Hospital and Jakaya Kikwete Cardiac Institute.*

In the supporting affidavit, Mr. Kajembe verifies that he consulted and obtained from the Applicant and he has knowledge on the following facts: That the Applicant was prosecuted and convicted for the offence of three (3) cattle theft and sentenced to fifteen (15) years imprisonment, and that he was aggrieved by the decision hence preferred the Appeal in this court to contest the judgment.

Mr. Kajembe states further that the Applicant is seventy one (71) years of age and partially incapacitated from heart diseases and sugar related problems and was enjoying family care and medical attention

& treatment from Muhimbili National Hospital and Jakaya Kikwete Cardial Institute, which are not currently available in prison custody as per scheduled dates. To substantiate his statements, Mr. Kajembe decided to attach the judgment of the district court in the case, petition of the Appeal and clinic cards issued by the Handeni District Hospital, Muhimbili National Hospital and Jakaya Kikwete Cardial Institute.

The statements in the affidavit were received well by the learned State Attorney, Ms. Elizabeth Muhangwa, who supported the application without any hesitation. This made the court's role easy as when the application was scheduled for hearing yesterday noon hours, there was no arguments and counter arguments. It was Mr. Kajembe's brief submission that all is displayed in the affidavit and would like to hear from the Republic. Ms. Muhangwa being aware of section 368 (1) (a) of the **Criminal Procedure Act** [Cap. 20. R.E. 2019] (the Act) and reason of sickness on part of the Applicant, she opted to support the Application.

I have glanced at the record of this application and found out that the Applicant is old aged at seventy one (71) years suffering from sugar/diabetes & heart diseases and has been attending Muhimbili National Hospital since when he was attacked by severe

stroke on 27<sup>th</sup> December 2017. Facts registered in the proceedings and during mitigation when the Applicant was asking mercy and leniency of the district court, after his conviction to the charged offence of cattle theft, display the following text lamented by the Applicant:

*...I am sick, I am diabetic and High Blood Pressure and I attend clinic at Muhimbili National Hospital every month and I used injection as medication. I pray the court to reduce the sentence because even now I am not feeling well...*

The law in section 368 (1) (a) (i) & (ii) of the Act allows bail pending appeal and was enacted in the following words:

*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; or*

*(ii) that the execution of the sentence appealed against be suspended pending the hearing of his appeal in which case*



*he shall be treated as a remand prisoner pending the hearing of his appeal.*

(Emphasis supplied).

The law in bolded words require applicants for bail pending appeal to produce reasonable cause. The present Applicant has produced the reason of sickness and had justified his cause. I also noted the deamenour of the Applicant during the hearing of this Application through visual court in maweni prison, and I think, on my part, he had produced reasonable cause as per requirement of the law in section 368 (1) (a) (i) & (ii) of the Act. In any case, bail pending appeal may be part of the constitutional right enshrined under Article 13 (6) (b) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002) (the Constitution).

In view of the foregoing reasons, I am therefore moved to grant the Application. However, for the Applicant to be released from prison custody, he must fulfill the following listed bail pending appeal conditions, namely:

- 1.The Applicant must register two (2) reliable sureties;
- 2.The sureties must be citizens of Tanzania in possession of National Identification Card issued by National Identification Authority (NIDA);

3. The sureties must possess letters of introduction from their respective employers or village / street recognized authorities;
4. The sureties must enter their presence before Deputy Registrar of this Registry on the day of Applicant's release;
5. The Applicant's sureties shall undertake to make sure that the Applicant is available and enter attendance in this court whenever he is required to do so, as per scheduled dates of the Appeal;
6. Each Applicant's sureties shall sign bail bond of Tanzanian Shillings Five Million Only (5,000,000/=); and
7. The above ordered bail conditions shall be supervised and sureties certified by the Deputy Registrar of this Registry in accordance to the laws regulating bail in this court.

Order accordingly.



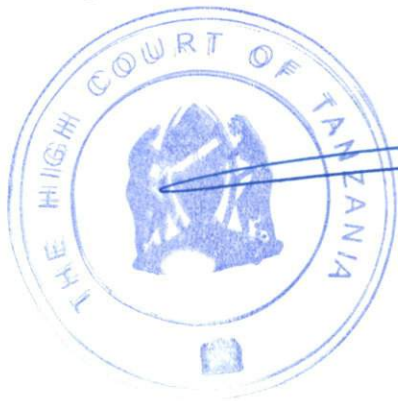
A handwritten signature in blue ink, which appears to read "F.H. Mtulya", is written over the seal and the printed name.

F.H. Mtulya

**Judge**

31.08.2021

This Ruling is delivered in Chambers under the seal of this court in the presence of the Applicant, Mr. Athumani Mohamed Msukulu through visual court and in the presence of the learned minds, Ms. Tussa Mwaihesya, learned State Attorney for the Republic and Mr. Augustino Mpandangongo, learned counsel, for the Applicant.

A handwritten signature in blue ink, which appears to read "F.H. Mtulya", is written over the seal and the text below it.

F.H. Mtulya

**Judge**

31.08.2021