

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

CRIMINAL REVISION NO. 02 OF 2021

*(Arising from Criminal Case No. 283 of 2021 of the Kasulu District Court at Kasulu
before I.D. Batenzi – RM)*

JOSEPH S/O MWITA BENARD.....1st APPLICANT

YOHANA S/O JOHN MALALO.....2nd APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

22nd & 25th October, 2021

A. MATUMA, J.

The applicants and two others are standing charged in the District Court of Kasulu at Kasulu vide Criminal Case No. 283 of 2021 in which they are alleged to have on the 10th July, 2021 stolen Tshs. 56,908,920/= the property of Baraki Credit Company Limited.

The trial court on the same very date when the applicants were arraigned set bail conditions to the effect that;

- i. Each accused to have two reliable sureties.*

- ii. Each surety to execute bail bond of Tshs. 10,000,000/= which shall not be deposited.*
- iii. Each accused to deposit in court cash money Tshs. 28,454,460/= or proof of ownership of any of immovable property valued Tshs 28,454,460/=.*
- iv. That the sureties to bring in court introduction letters issued by reliable institutions.*

The applicants did not meet these bail conditions while their fellow two others (co-accused persons) met them and were accordingly released on bail.

The applicants are now before me seeking these bail conditions to be reviewed interms of section 149 of the Criminal procedure Act, Cap. 20 R.E. 2019. At the hearing of this Application Mr. Zacharia Ferdinand Nyarombo learned advocate represented the Applicants while Mr. Shabani Juma Masanja learned Senior State Attorney represented the Respondent.

The learned advocate for the applicants submitted mainly reiterating his earlier on filed affidavit in support of the application to the effect that the bail conditions set by the trial court particularly the bail amount is excessive, unjust, and contrary to the requirements of the law as it did not consider the principle of sharing. The learned advocate cited the case

of *Silvester Hillu Dawi and Another versus the Director of Public Prosecutions, Criminal Appeal no. 250 of 2006* which was also quoted in the case of *Pastory Buduno @ Panduji and 2 Others, Misc. Criminal Application no. 2 of 2021*, High Court At Tabora by Bahati, J.


The learned Senior State Attorney did not object this application.

Having heard both parties, I agree with them that bail conditions must be set in accordance to the requirements of the law and should not be unreasonable and impracticable. See **Hamis Masisi & 6 others v. Republic** [1985] TLR 24.

In granting bail the court has to consider the mandatory bail conditions as per section 148 (6) (a) & (b) of the Criminal Act supra or section 36 (5) of the EOCCA depending on the nature of the case.

In addition to the mandatory conditions, the court may impose additional conditions as prescribed under section 148 (7) of the CPA or section 36 (6) of the EOCCA.

This being a purely Criminal Case, only the Provisions of the Criminal Procedure Act supra would apply.



Since the Applicants' grievances seems to be on the bail amount imposed, I will concentrate on that complaint and review other conditions which were set by the trial court.

The law under section 148 (5) (e) of the CPA supra provides that where the offence with which the person is charged involves actual money or property whose value exceeds ten million shillings, the accused should be required to deposit cash or other property equivalent to half the amount or value of actual money or property involved and the rest shall be secured by execution of a bond.

In that respect since this case involves actual money Tshs 56,908,920/= the law requires that for the accused persons to be released on bail, they should have been required to deposit Tshs. 28,454,460/= as half of the amount involved. The rest should have been secured by execution of a bond.

Under the principle of sharing as right argued by Mr. Zacharia Ferdinand Nyarombo learned advocate, it was held in various cases including but not limited to Silvester Hillu Dawi and another supra, that the half of the amount involved in the charge sheet which is required to be deposited or the title deed of its equivalent value must be shared by all accused persons who are jointly charged. In that respect the Tshs. 28,454,460/=

should have been shared by all the four accused persons, and the rest be secured by the same principle of sharing by their sureties in execution of the bond. In the circumstances, the trial court should have ordered each of the accused to deposit Tshs. 7,113,615/= or the title deed of the property of such equivalent value. And since the trial court decided that each accused should have two reliable sureties, then it should have equally divided the rest of the amount i.e. Tshs. 28,454,460/= to the number of total sureties i.e. 8. In that respect each surety should have executed a bond of Tshs. 3,556,807.5 only.

For the cash to be deposited or the title deed of the property, the law is again clear that if the title deed is not available then such any other evidence to the satisfaction of the court in proof of the existence of the property.

In that respect, I agree with the Applicants' advocate Mr. Zacharia Ferdinand Nyarombo that the bail amount which was set by the trial court was so excessive and contrary to the law. In the exercise of my powers under section 149 of the CPA supra I do hereby revise the bail conditions set by the trial court in respect of all four accused persons and order that they shall be released on bail upon satisfaction of the following bail conditions;

- i. *Each of the Applicants should have two reliable sureties who shall each execute a bond of Tshs. 3,556,807.5.*
- ii. *Each applicant to deposit in court cash money Tshs 7,113,615/= or in the alternative deposit the title deed of an immovable property of an equivalent value supra. If the title deed is not available then the applicants to bring any other proof of the existence of such property to the satisfaction of the court. For clarity the cash to be deposited or the title deed of the immovable property as herein above stated need not necessarily be the property of the applicants in person. It might be the cash or title deed of any other person who volunteer them to be deposited for and on behalf of the applicants and who shall also appear physically in court to undertake on record the risks of putting his/her cash or property as a bond for the applicant or applicants.*
- iii. *Each of the sureties must have an introduction letter from any of the local leaders of their respective area of residence to wit; the village chairman or village Executive Officer, street chairman or the Mtaa Executive Officer, Ward Executive Officer. In case the surety is an employee then an introduction letter from the employer serve that the Employer must be the Government or any dully recognized and registered institution or company.*

- iv. *Each of the Applicants to surrender to the nearest police station of their passports or any travelling documents if any.*
- v. *Each of the Applicants should not travel abroad without a prior written consent of the Resident Magistrate Incharge of Kasulu District Court.*

It should be noted that these bail conditions shall apply to all four accused persons. But since the two others have already been released on bail their release is not disturbed. These conditions shall apply to them only in case of default by either of them and when the court is in need to deal with the sureties in accordance to the law.

This application is thus allowed to the extend herein above stated and I order that the applicants should be brought before the trial magistrate for approval of sureties if any. In that respect, the original record should be remitted back to the District Court without undue delay.

It is so ordered.




A. Matuma

Judge

25/10/2021

Court: Ruling delivered in the presence of counsels for the parties.

Sgd: A. Matuma

Judge

25/10/2021