

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. CRIMINAL APPLICATION No. 31 OF 2022

IN THE MATTER OF THE APPLICATION FOR BAIL PENDING

DETERMINATION OF CRIMINAL SESSIONS CASE No. 23 OF 2022

(Arising from the High Court (Musoma District Registry) in Criminal Sessions Case No. 23 of 2022 & Resident Magistrates' Court of Musoma at Musoma in P.I No. 13 of 2020)

MWITA JUMA @ MACHANGO APPLICANT

Versus

REPUBLIC RESPONDENT

RULING

05.07.2022 & 15.07.2022

F.H. Mtulya, J.:

The applicant, Mr. Mwita Juma @ Machango was arraigned in this court in **Criminal Sessions Case No. 23 of 2022** (the case) for allegations of an act intended to cause grievous harm to Mr. Majogora John by use of *panga* directed at sensitive parts of the victim's left shoulder and hand. The offence is prosecuted under section 222 (a) of the **Penal Code** [Cap. 16 [R.E 2019] (the Code). Being aware that the offence is bailable and has no previous record in declining bail conditions, the applicant approached this court and filed the present application praying for bail pending final determination of the case.

The application was scheduled for hearing on 5th of July 2022 and the applicant appeared in person without any legal representation whereas the Republic enjoyed legal services of Ms. Agma Agrey Haule, learned State

Attorney. The applicant, being lay person, had a very brief submission which in short, contained three (3) reasons in favour of the application, namely: first, the law regulating bail allows bail to the applicants who are prosecuted for the offence; second, the applicant previously in the **District Court of Musoma at Musoma in P.I No. 13 of 2020** had enjoyed bail without any breach of the bail conditions; and finally, the applicant has reliable sureties who are able to execute bail bond.

Ms. Haule being aware of provision enacted in section 148(1) of the **Criminal Procedure Act** [Cap. 20 R.E. 2019] (the Act) and her previous participation in the precedent of **Mwanaidi Nyahori & Another v. Republic**, Misc. Criminal Application No. 2 of 2022 delivered by this court early this year, and bail conditions listed in the **Republic v. Maisory Chacha Manga**, P.I No. 76 of 2018, did not register any protest in the application. However, she prayed for severe conditions as to avoid jumping of bail conditions by the applicant. In order to persuade this court to appreciate her thinking, Ms. Haule argued that the offence under which the applicant is prosecuted is serious and this court has done so in its previous decisions.

The thinking of Ms. Haule was not received well by the applicant who contended that stiff conditions may deny him freedom of movements as he will be unable to fulfill them. In order to bolster his argument, the applicant submitted that he belongs to a village community where there are no title deed or public servants. In his

opinion, at least the requirement of National Identification Number, commonly known as NIDA, may be affordable for villagers.

On my part, I think, there is already in place a precedent of this court on the subject, which had considered and resolved on application of section 148 (1), (6) & (7) of the Act and cited decision on bail conditions and jumping of bail by applicant in **Republic v. Maisory Chacha Manga** (supra). In the same precedent the balance of freedom of movements and presumption of innocence enshrined under article 13 (6) (b) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E 2019] (the Constitution) and justice to the Republic and victim were considered and resolved (see: **Mwanaidi Nyahori & Another v. Republic** (supra).

While I am quietly aware of the general principle that every case has to be determined upon its peculiar materials (see: **NBC Limited & Another v. Bruno Vitus Swalo**, Civil Application No. 139 of 2019 & **Republic v. Ramadhani Mohamedi Chambali**, Criminal Session Case No. 20 of 2020). However, the practice displayed in the precedent of **Mwanaidi Nyahori & Another v. Republic** (supra) cannot be declined, unless there are good reasons to do so.

I see no any specific reasons in the present application to compel this court to depart from its previous decision. In any case, decisions on the same subject matter emanating from this court must have similar results. The practice create certainty & predictability of decisions and builds confidence to applicants and justice stakeholders

in our State. I will follow the course established by this court in **Mwanaidi Nyahori & Another v. Republic** (supra).

Before I list bail conditions for the applicant, I must let him aware that it is generally accepted that once an offence is bailable, the applicable principle requires that the conditions set must be reasonable. However, when it comes to serious offences, conditions may be stiff. If any of the applicants cannot fulfil the listed conditions, he will have to be deprived of his liberty. This is not because the offence is not bailable, but because he cannot meet the listed conditions. There is practice in this court that support the preposition (see: **Francis Davis Mchacky & Ten Others v, Republic**, Misc. Criminal Economic Application No. 14 of 2022; **Salum Abeid Mbaya & Ten Others v. Republic**, Consolidate Misc. Economic Applications Nos. 68 & 69 of 2019; and **Prof. Dr. Costa Ricky Mahalu & Another v. The Hon. Attorney General**, Miscellaneous Civil Cause No. 35 of 2007).

Having said so and noting of the law regulating bail in section 148 (1), (6) (a)-(b) & 7 (a)-(c) of the Act, I have decided to grant bail to the applicant. However, in order to be released from custody, the applicants must fulfil the following listed conditions:

1. The applicant has to sign bail bond to the tune of Tanzanian Shillings Three Million Only (3,000,000/=);
2. The applicant has to register two (2) reliable sureties who are able to execute bail bond amounting to Tanzanian Shillings One Million Only (1,000,000/=) each and must be

in possession of National Identification Card issued by the National Identification Authority (NIDA) or government employee in possession of work identification card;

3. The sureties must be residents of Mara Region and must verify their stay in Mara Region by presenting introduction letters from their respective hamlet or mtaa chairpersons;
4. The applicant should not leave Mara Region without prior written permission of the Deputy Registrar of this court;
5. The applicant must report to the Deputy Registrar of this court once on every last Monday of every Month;
6. The applicant must surrender his passport or any other travelling documents to the Deputy Registrar of this court; and
7. Bail conditions set out in this Ruling are to be supervised by the Deputy Registrar of this court.



It is so ordered.

F.H. Mtulya

Judge

15.07.2022

This Ruling was delivered in chambers under the seal of this court in the presence of the learned State Attorney, Ms. Agma Agrey Haule and in the presence of the applicant, Mr. Mwita Juma @ Machango.

F.H. Mtulya

Judge

15.07.2022