

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

AT MUSOMA

IN THE MATTER OF THE APPLICATION FOR BAIL PENDING

DETERMINATION OF CRIMINAL SESSIONS CASE No. 50 OF 2022

1. SIMON KILES SAMWEL @ K 2. SAMWEL MARWA MAHENDE & 3. JIMMY SOSPETER MNIKO	} APPLICANTS
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Versus

REPUBLIC RESPONDENT

RULING

01.08.2022 & 03.08.2022

F.H. Mtulya, J.:

The State of the United Republic of Tanzania is largely based on the common law legal tradition, with some touches of customary law and Islamic law. The State is guided by the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution) which empowers the Judiciary of Tanzania the final authority in dispensation of justice (see: article 107A (1) of the Constitution). This court, the High Court, is established under article 108 of the Constitution with unlimited powers to entertain all type of cases, attached with inherent jurisdiction in resolving disputes.

Following the cited powers and recognizing the well-established practice of the common law legal tradition in respecting

decisions of the higher courts in judicial hierarchy, this court and the Court of Appeal have been producing precedents which bind subordinate courts, including committing courts. However, in some instances the subordinate courts may be doubtful in appreciating guidance and directives of the superior courts in judicial hierarchy either by ignorance of the law and practice or misunderstanding of the principle governing common law legal tradition. I will explain from the experience collected in the present application emanating from a plea taking and preliminary hearing proceedings of this court in **Criminal Sessions Case No. 50 of 2022** (the case).

The facts of the case and committal proceedings show that the three (3) accused persons were arrested and jointly charged for the offence of manslaughter of Johnson Msiranga (the deceased), contrary to section 195 and 198 of the **Penal Code** [Cap. 16 R.E. 2019] (the Code). The offence is alleged to have been committed on 14th May 2021 at Starehe Street within Tarime District in Mara Region. During committal proceedings, at the **District Court of Musoma at Musoma** (the committing court) in **PI Criminal Case No. 4 of 2021** (the PI case), the committing court on 12th July 2021, ordered bail conditions to all accused persons. On this day, 12th July 2021, the accused could not meet the bail conditions set. However, on 15th July 2022, all accused person complied with bail conditions, namely: *two reliable sureties for each accused person*

to execute bail bond worth Tanzanian Shillings Ten Million (10,000,000/=Tshs.) for each sureties.

At the end of the proceedings on 30th May 2022, the committing court had produced its committal order which shows that:

For the foregoing, the 1st accused, one Simon Kiles Samwel, Samwel Marwa Mahende, the 2nd accused and Jimmy Sospeter Mniko, the 3^d accused, are committed to the High Court for a trial at session that will appear convenient to the Deputy Registrar...all the accused persons shall continue to be in their bail as they did not abscond even a single day.

This order was invited in the present case by learned counsels for the accused persons, Mr. Paulo Obwana and Christopher Waikama, during the preliminary hearing proceedings of the case in this court. The argument presented by the dual learned counsels is that the accused persons are still enjoying bail set by the committing court and this court cannot curtail their rights and freedoms of movements granted by the committing court. This thinking was protested by learned State Attorney, Mr. Roosebert Nimrod Byamungu, who appeared for the Republic. According to Mr. Byamungu, lower courts decisions or orders cannot, in any way, bind this court of record. In bolstering his argument, Mr.

Byamungu produced three (3) reasons, *viz.* first, the committing court has already completed its business in committal proceedings; second, the present case is not part of the committing court and bears a distinct case number; and finally, this court has no any bail agreements with the accused persons and it would be impossible to let them free or enjoy bail conditions set by the committing court, which cannot be executed in this court.

This court appreciated the submissions registered by learned minds in this application and powers of this court on whether to commit the accused persons to custody or let them free to enjoy bail conditions ordered by the committing court. I think is obvious that the powers of this court cannot be restrained by an order of subordinate court, as I have already highlighted in this Ruling on the practice of the common law legal tradition. In that case, thus court cannot be detained on the subject for two obvious reasons, namely: first, this is a superior court to the committing court; and second, there is already directives of this court in **Republic v. Emmanuel Paulo**, Criminal Session Case No. 38 of 2022.

The decision in **Republic v. Emmanuel Paulo** (supra) shows that:

...those bail terms were set for appearance at the subordinate court. They only applied there for assurance of the accused person's appearance in that court. The old

bail terms were for the appearance at the committal court.

They expired upon the accused person being committed to this court...

(Emphasis supplied).

This court arrived at the above conclusion, apart from other matters, due to inconsistencies of bail conditions set by committing courts in cases of similar facts and in some decisions lenient bail conditions are set without taking consideration of: nature of the complained offence; restrictions of freedom of movements; and failure to properly examine reliability of applicants' sureties (see: **Republic v. Emmanuel Paulo** (supra); **Republic v. Maisory Chacha Manga**, P.I No. 76 of 2018; and **Republic v. Nikorausi Matare @ Nikoras & Two Others**, Criminal Sessions Case No. 8 of 2022). This court in **Republic v. Nikorausi Matare @ Nikoras & Two Others** (supra) observed that:

I have assessed the bail terms set by the committing court during committal proceedings, they are insufficient to guarantee their attendance to this court.

In order to avoid inconsistencies in bail conditions set by the committing courts and confusions on the applicability of the orders of committing courts on bail conditions, the committing courts must cancel bail to accused persons when committing them to this court. Therefore, all applications for bail may be registered in this court

either orally or in writing under the provision of section 392A (1) of the **Criminal Procedure Act** [Cap. 20 R.E. 2022] (Act), if applicants so wish to enjoy the same. In any case, the committing courts cannot order specific date for the accused persons or applicants to appear before this court for plea taking, preliminary hearing or any other order, which has caused a lot of turbulences in searching accused persons and delay of justice. The practice cannot be cherished by this court aiming at timely and accessible justice for all.

I am aware in the present application, Mr. Obwana and Mr. Waikama, after appreciation of the cancellation of the bail of the accused persons, prayed orally in this court and registered relevant materials in favour of application for bail. This court will not hesitate to grant the same as the Republic did not register any protest. However, Mr. Byamungu prayed this court to think the gravity of the offence alleged, which may attract grave sentence and consider availability of the applicants when summoned to appear for their case.

I am aware of the provisions in section 392A (1) of the Act on oral application and section 148 (1), (6) & (7) of the Act on bail conditions. The provisions of section 148 (1), (6) & (7) of the Act have already received a bundle of precedent in cases related to the present one (see: **Mwanaidi Nyahori & Another v. Republic**, Misc.

Criminal Application No. 2 of 2022; **Mwita Juma @ Machango v. Republic**, Misc. Criminal Application No. 31 of 22; **Republic v. Emmanuel Paulo** (supra); and **Republic v. Nikorausi Matare @ Nikoras & Two Others** (supra). The cited precedent had considered interest of justice and freedoms of the accused persons, with a touch on presumption of innocence guaranteed under the enactment of article 13 (6) (b) of the Constitution.

I am also quietly conscious 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 six (6) bail terms printed in the decision of **Republic v. Emmanuel Paulo** (supra) and seven (7) bail conditions ordered in the precedent of **Mwanaidi Nyahori & Another v. Republic** (supra) which were cherished in the Ruling of **Mwita Juma @ Machango v. Republic** (supra), cannot be declined, unless there are good reasons to do so. This court may wish to start with the standard practice set in the cited precedents for the sake of consistency, certainty and predictability of the decisions from this court. The practice builds trust and confidence to applicants and justice stakeholders in our State.

Having said so, I am inclined to follow the course established by this court in **Mwanaidi Nyahori & Another v. Republic** (supra)

and **Republic v. Emmanuel Paulo** (supra). However, before I list bail conditions for the applicants in the present application, I must let them 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 they cannot meet the listed conditions. There is practice in this court in support of the preposition (see: **Francis Davis Mchacky & Ten Others v, Republic**, Misc. Criminal 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).

Before I pen down, I would like to take this moment to remind committing courts to refrain from maintaining bail conditions ordered in their jurisdiction to be entertained by this court. The orders cannot work as they are believed to have been expired immediately after the committal order (see: **Republic v. Emmanuel Paulo** (supra). In order to avoid unnecessary confusions in the future, committing courts are required to cancel bail when committing the accused persons to this court.

In the end, and noting the provisions in section 148 (1), (6) (a)-(b) & 7 (a)-(c) of the Act with regard to bail conditions, I have decided to grant bail to the applicants. However, in order to be released from custody, the applicants must fulfil the following listed conditions:

1. Each applicant has to sign bail bond to the tune of Tanzanian Shillings Three Million Only (3,000,000/=);
 2. Each 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. Each 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. The reliability of the applicants' sureties shall be examined by the Deputy Registrar of this court.

The Bail conditions set out in this Ruling shall be supervised by the Deputy Registrar of this court at Musoma District Registry.

It is so ordered.



F.H. Mtulya

Judge

03.08.2022

This Ruling was delivered in chambers under the seal of this court in the presence of all three (3) applicants, Mr. Simon Kiles Samwel @ K, Samwel Marwa Mahende and Jimmy Sospeter Mniko and their learned counsels, Mr. Paulo Obwana and Mr. Christopher Waikama and in the presence of the learned State Attorneys, Mr. Tawabu Yahya Issa and Mr. Roosebert Nimrod Byamungu for the Republic.

F.H. Mtulya

Judge

03.08.2022