

**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. 126 OF 2021**

**D.7762 Sgt. MTULI NDEGE @ MGONYA ..... APPLICANT**

*Versus*

**REPUBLIC ..... RESPONDENT**

**RULING**

01.08.2022 & 03.08.2022

F.H. Mtulya, J.:

On the last day of committal proceedings, 19<sup>th</sup> July 2022, at the **Resident Magistrates' Court of Musoma at Musoma** (the committing court) in **PI Criminal Case No. 5 of 2018** (the PI case), the committing court granted bail to the applicant and committed him to this court for trial. Finally, with regard to bail, the committing court ordered that: *the accused person be on bail while waiting for trial at the High Court.*

This final order of the committing court is obvious in breach of the directives of this court pronounced in the Ruling of **Simon Kiles Samwel @ K & Two Others v. Republic**, Application for Bail Pending Determination of **Criminal Session Case No. 50 of 2022**, which had canceled bail conditions set by the committing court for lack of jurisdiction and respect of authority of this court as the

committing court in judicial hierarchy cannot order bail in a case file which it has completed its business.

Following the order of the committing court and directives of this court in **Simon Kiles Samwel @ K & Two Others v. Republic** (supra), during plea taking and preliminary hearing in **Criminal Session Case No. 126 of 2021** (the case), this court canceled bail granted by the committing court to the applicant for want of proper application of laws regulating bail in this court.

Noting bail has been cancelled and being aware of his participation in two (2) previous decisions of this court on the subject, namely: **Simon Kiles Samwel @ K & Two Others v. Republic** (supra); and **Fredy Jovin @ Sibiye Ngoti & Three Others**, Application for Bail Pending Determination of **Criminal Session Case No. 47 of 2022**, Mr. Christopher Waikama, learned counsel for the accused person quickly invited section sections 392A (1) and 148 of the **Criminal Procedure Act** [Cap. 20 R.E. 2019] (the Act) and article 13 (6) (b) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution) for oral bail application, right to bail and presumption of innocence respectively.

The prayer of Mr. Waikama was well received by Mr. Tawabu Yahya Issa, learned State Attorney who appeared for the Republic. However, Mr. Tawabu prayed for severe conditions as the offence

of manslaughter itself is a grave crime. In a brief reply, Mr. Waikama prayed for practicable bail conditions.

On my part, I think, bail conditions in cases like the present one are regulated by section 148 (1), (6) (a)-(b) & 7 (a)-(c) of the Act. It is fortunate that the section has received a precedent of this court in **Simon Kiles Samwel @ K & Two Others v. Republic**, (supra), and this court sees no any reason to depart from its own previous conditions set in the cited precedent.

In the end, I grant bail to the applicant under section 148 (1), (6) (a)-(b) & 7 (a)-(c) of the Act and the cited precedent. However, in order to be released from custody, the applicant must fulfill 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. 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 the applicant, D7762 Sgnt. Mtuli Ndege @ Mgonya, and his learned Counsel, Mr. Christopher Waikama and in the presence of the learned State Attorney, Mr. Roosebert Nimrod Byamungu for the Republic.

  
F.H. Mtulya

**Judge**

03.08.2022