

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. 107 OF 2022

1. EDWIN DENG	}	APPLICANTS
2. MUSA MAGOIGA		
3. PIUS JACKSON &		
4. MCHUGU CHARLES		

Versus

REPUBLIC RESPONDENT

RULING

01.08.2022 & 03.08.2022

F.H. Mtulya, J.:

In the course of proceedings of **Criminal Sessions Case No. 107 of 2022** (the case), this court noted the four accused persons namely: Edwin Denge, Musa Magoiga, Pius Jackson and Mchungu Charles were cherishing bail granted by the committing court in the **District Court of Musoma at Musoma** in **PI Criminal Case No. 4 of 2019**. During the committal order, the committing court ordered that: *all accused persons to continue with their bail on the same sureties and address while awaiting trial at the High Court.*

However, the order contravened the directives of this court 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 stated that inferior courts cannot order

superior courts in judicial hierarchy hence this court cancelled previous bail conditions ordered by the committing court and was moved by new bail conditions as per precedents in **Republic v. Emmanuel Paulo**, Criminal Session Case No. 38 of 2022 and **Mwita Juma @ Machango v. Republic**, Misc. Criminal Application No. 31 of 2022.

Noting of the precedents, Ms. Maula Tweve, learned counsel for the applicant orally applied for bail for the first to the third applicants, and declined for the fourth accused person as he was not present in court. In her prayer, Ms. Tweve cited section 392A (1) 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) in favour of oral application and presumption of innocence respectively.

The prayer was not protested by the Republic enjoying legal services of Mr. Roosebert Nimrod Byamungu. However, Mr. Byamungu prayed this court to set bail conditions that will consider availability of the applicants and precedent in of **Simon Kiles Samwel @ K & Two Others v. Republic** (supra). This court is bound by its own previous decisions on similar facts for equal treatments of applicants. I am aware of the precedent in **Mwita Juma @ Machango v. Republic** (supra), which had determined similar situation on the applicant who was prosecuted for an act intended to cause grievous harm contrary to section 222 (a) of

the **Penal Code** [Cap. 16 [R.E 2019]. I will follow the conditions set in the Ruling of **Mwita Juma @ Machango v. Republic** (supra).

Having said so and noting of the law regulating bail under section 148 (1), (6) (a)-(b) & 7 (a)-(c) of the Act, I have decided to grant bail to the applicants. However, in order to be released from custody, the applicants must fulfill 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 three (3) applicants, Mr. Edwin Denge, Musa Magoiga and Pius Jackson and their learned Counsel Maula Tweve and in the presence of the learned State Attorneys, Mr. Tawabu Yahya Issa and Mr. Rosebert Nimrod Byamungu for the Republic.



F.H. Mtulya

Judge

03.08.2022