

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

MISCELLANEOUS CRIMINAL APPLICATION No. 2 OF 2022

*(Arising from the High Court (Musoma District Registry) in Criminal Session Case No. 131
of 2021 & District Court of Tarime at Tarime in P.I No. 66 of 2020)*

1. MWANAIDI NYAHORI

2. KICHERE WAMBURA NYAHORI



..... **APPLLCANTS**

Versus

REPUBLIC **RESPONDENT**

RULING

04.02.2022 & 04.02.2022

F.H. Mtulya, J.:

This is an application for bail pending trial registered under the provisions of section 148(1) and 392 A(i) & (ii) of the **Criminal Procedure Act** [Cap. 20 R.E. 2019] (the Act). Mwanaidi Nyahori and Kichere Wambura Nyahori (the applicants) have instructed learned counsel, Mr. Juma David Mwita to prepare and file the present application for bail pending hearing and determination of the **Criminal Session Case No. 131 of 2021** (the case) in this court.

In his affidavit in support of the application, Mr. Mwita deponed that the applicants are facing criminal charge of the act intended to cause grievous harm contrary to section 222 of the **Penal Code** [Cap. 16 [R.E 2019]]. The Applicants were committed to

this court for trial after their **P.I. No.66 of 2020** (the P.I) filed at the **District Court of Tarime at Tarime** (the district court). Mr. Mwita stated further that the offence is bailable and the applicants had enjoyed bail pending investigation of the case and have never tumbled with bail conditions set by the district court. According to Mr. Mwita, the bail was cancelled by the district court after the applicants were committed to this court.

Today morning when the application was scheduled for hearing, Mr. Mwita was very brief and to the point. He submitted that the details of the application are displayed in the affidavit and argued that the applicant are prosecuted in bailable offence and are good persons who can be trusted as they have good history in abiding with bail conditions. Finally, Mr. Mwita prayed for lenient bail conditions as the applicants are villagers in possession of properties without relatives in public service.

The Republic on the other hand marshalled learned State Attorney, Ms. Agma Haule who had no problem with the application contending that it is the right to the applicants. However, Ms. Haule protested the second prayer on lenient bail conditions. According to Ms. Haule, applicants of bail in cases like the present one must be ordered stiff bail conditions to enforce their appearance during trial. To her opinion, practice in this

Region of Mara has shown that applicants who are awaiting trial in cases like the present one, once are granted bail, they disappear for trial. In order to bolster her argument, Ms. Haule cited a withdrawn case in **Republic v. Maisory Chacha Manga, P.I No. 76 of 2018** committed to this court from the district court, which could not proceed because the applicant had jumped bail. To her opinion, this court had ordered Tanzanian Shillings Two Million (2,000,000/=) and two sureties, which was an exit to the applicant. Finally, Ms. Haule asked this court to consider justice to the victim by imposing solid bail conditions.

In a brief rejoinder, Mr. Mwita argued that each application must be decided on its peculiar facts, and in any case the applicants are distinct from Maisory Chacha Manga. To his opinion, Mr. Mwita thinks that the applicants are villagers and acquired properties in their village of residence which can be invited to fulfil bail conditions. Finally, Mr. Mwita invited this court to consider bail conditions as they are set out under section 148 (6) & (7) of the Act.

In the present application, there is no dispute on whether the offence of act intended to cause grievous harm is bailable. The dispute is on conditions which this court may order to balance the rights of the applicants under section 148 (1) of the Act & article

13 (6) (b) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E 2019] on one hand and the claimed justice to the victim on the other. I understand Ms. Haule may be protesting in an imaginary events or comparing one incident with another in different applications. I am aware of the general principle that every case is to be decided upon its peculiar facts (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 of applicants escaping from their trial in this Region of Mara cannot be ignored in its entirety. The practice causes delay in hearing of cases and denial of justice to the victims.

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 applicants. However, in order to be released from custody, the applicants must fulfil the following listed conditions:

1. Each applicant to sign bail bond to the tune of Tanzanian Shillings Three Million Only (3,000,000/=);
2. Each applicant 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 applicants should not leave Mara Region without prior written permission of the Deputy Registrar of this Registry;
 5. The applicants must report to the Deputy Registrar of this Registry once on every last Monday of every Month;
 6. The applicants must surrender their passports or any other travelling documents to the Deputy Registrar of this Registry; and
 7. Bail conditions set out in this Ruling are to be supervised by the Deputy Registrar of this Registry

It is so ordered.



F.H. Mtulya

Judge

04.02.2022

This Ruling was delivered in chambers under the seal of this court in the presence of the learned State Attorney, Ms. Agma Haule and in the presence of Mr. Juma David Mwita, learned counsel for the applicants.

A handwritten signature in blue ink, appearing to read "F.H. Mtulya", with a long horizontal flourish extending to the right.

F.H. Mtulya

Judge

04.02.2022