

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA

(DC) CRIMINAL APPEAL NO. 68 OF 2022

(Arising from Ruling and Order of the District Court for Dodoma in criminal Case No.
107 of 2022 dated 19.8.2022)

JOACHIM EVANCE MOLLEL@JO..... APPELLANT

VERSUS

REPUBLIC RESPONDENT

19/10/2022 & 26/10/2022

JUDGMENT

MASAJU, J

The Appellant, Joachim Venance Mollel@Jo has been indicted before the District Court of Dodoma at Dodoma for **Grave Sexual Abuse** contrary to section 138C (1) (a) (2) (b) of the Penal Code, [Cap 16 RE 2019] in Criminal Case No. 107 of 2022. Prior to this case the Appellant had been charged with another same offence in the Resident Magistrates' Court of Dodoma at Dodoma in Criminal Case No. 23 of 2022 in which he had been admitted to bail.

The offence in Criminal Case No. 107 of 2022 was allegedly committed when the Appellant was on bail. The Respondent successfully prayed the Court to deny the Appellant bail on the reasoning that he committed the offence whilst on bail contrary to section 148 (5) (c) of the Criminal

Procedure Act, [Cap 20 RE 2019], hence the appeal in the Court. The Criminal Case No. 23 of 2022 in the Resident Magistrates' Court of Dodoma has since been disposed, for the Appellant was discharged under section 225 (5) of the Criminal Procedure Act, [Cap 20 RE 2022]. That being the case, the Appellant is now eligible for admission to bail because Criminal Case No. 23 of 2022 in the Resident Magistrates' Court of Dodoma is no longer there.

Secondly, section 148 (5) (c) of the Criminal procedure Act, [Cap 20 RE 2022] of which the Appellant allegedly violated reads thus;

"148 (5) A police officer in charge of a police station or a court before whom an accused person is brought or appears, shall not admit that person to bail if-
(c) it appears that the accused has previously been granted bail by a court and failed to comply with the conditions of the bail or absconded"

The bail conditions to the Appellant in Criminal Case No. 23 of 2022 against the Appellant in the Resident Magistrates' Court of Dodoma at Dodoma were thus;

"(1) The accused (The Appellant) to have two sureties
(2) The two sureties to execute a bond of TZs 1,000,000/="

The Appellant had neither failed to comply with the said bail conditions nor absconded when he was granted bail. That being the case, section 148 (5) (c) of the Criminal Procedure Act, [Cap 20 RE 2022] could not have been invoked by the trial court to deny the Appellant bail.

The trial court therefore inadvertently misinterpreted section 148 (5) (c) of the Criminal Procedure Act, [Cap 20 RE 2022] to deny the Appellant bail as so rightly advised by the learned counsel for the Appellant, Ms.

Catherine Wambura and the learned State Attorney, Ms. Bertha Kulwa, for the Respondent Republic when the appeal was heard in the presence of the Appellant before the Court on the 19th day of October, 2022.

Thus, the meritorious appeal is hereby allowed. The trial court's Ruling/order denying the Appellant bail is hereby quashed and set aside accordingly. The original record is hereby remitted back to the trial court for consideration of the application/prayer for bail on this bailable offence accordingly.




GEORGE M. MASAJU

JUDGE

26/10/2022