

**IN THE HIGH COURT OF TANZANIA
(MOROGORO SUB REGISTRY)
AT MOROGORO**

MISC. CRIMINAL APPLICATION NO. 40 OF 2022

*(Originating from Criminal Sessions Case No. 100 of 2022 of the High Court of Tanzania
Morogoro, at Morogoro)*

ERICK MASSAWE APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

R U L I N G

30th November, 2022

CHABA, J.

This is a ruling on application for bail pending trial of Criminal Sessions Case No. 100 of 2022 before this Court. The applicant has moved this Court by way of Chamber Summons supported by affidavit duly sworn by the applicant. The application has been taken out under the provision of section 148 of the Criminal Procedure Act (Cap. 20 R. E. 2022).

Essentially, the affidavit deposed by the applicant is to the effect that, the applicant stand charged at the High Court (T), Morogoro for an act

intended to cause grievous harm contrary to section 222 (a) of the Penal Code [Cap. 16 R. E, 2022]. The applicant averred that, while in remand prison he fell sick. On later days in September, 2022 his health condition worsened and hence transferred to Muhimbili. He averred further that, his health and that of his wife who is the victim in Criminal Sessions Case No. 100 of 2022 is in danger hence this application. He averred further that there are people who are ready to stand as his sureties in the bail consideration.

Initially, the Respondent / Republic, did not seek to object the bail through counter affidavit. When the application was called on for hearing on 10/11/2022 the applicant enjoyed the services of Mr. Josebeth Kitale, learned advocate, and Mr. Emmanuel Kalinga, learned state Attorney entered appearance for Respondent / Republic.

In his short submission in support of the application, Mr. Kitale submitted that since the applicant's health condition is unfit (not good), he prays the Court to grant him his right to bail as enshrined in our Constitution. To cement on the above, Mr. Kitale referred to the case of **Patel vs. Republic**, 1971, High Court Digest, page 25.

On his part, Mr. Emmanuel Kahigi, learned State Attorney, so rightly did not contest the application.

The learned counsel for the applicant had nothing substantial to rejoin apart from promising that his client is ready to comply with the bail conditions that will be imposed by the court.

From the submissions of the parties, it is not disputed that the offence with which the applicant is charged is bailable and this court has jurisdiction to entertain the bail application. It is also a clear position in our law that, bail is both statutory and constitutional right for an accused person. The purpose of granting bail to an accused is to let him enjoy his freedom as long as he or she shall appear in Court for his trial. See: **Hassan Othman Hassan@ Hassanoo vs. Republic**, Criminal Appeal No. 193 of 2014 - CAT, at Dar es Salam (Unreported).

In that stance, there is no reasonable ground for denying bail to the applicant in the matter at hand. It is more so, considering that this application is not objected by the Respondent / Republic.

Due to the above reasons, I find that, the applicant is entitled to enjoy his prayer as hinted above. I accordingly, grant bail to the applicant under Section 148 (1) of the Criminal Procedure Act [Cap. 20 R. E, 2022]. Being guided by the provision of the law under section 148 (5) of the Criminal

Procedure Act (Supra), the grant of bail to the applicant is subject to the fulfillment of the conditions set forth herein below: -

1. The applicant must provide two reliable sureties who are to execute bonds valued to TZS. 25,000,000/= (Twenty-five million only) each. Preferably, one surety should be an employee of the Government of United Republic of Tanzania;
2. The applicant should not leave the jurisdiction of this Court without permission from the Deputy Registrar of the High Court (T) herein Morogoro Region;
3. The applicant must surrender his passport (if any) and any other legal travelling documents to the Hon. Deputy Registrar of the High Court (T), Morogoro;
4. The applicant is mandatorily compelled to appear in court at any time when he is required for hearing and final determination of his case, alluded to above;
5. Verification of the two sureties and bond documents shall be executed by the Hon. Deputy Registrar of the High Court (T) – Morogoro; and
6. Taking into account that the victim's health condition is so serious, Valuation Report from a Registered Valuer employed by the

Government of the United Republic of Tanzania must be tendered and/or produced for verification before the Hon. Deputy Registrar of the High Court (T), Morogoro before the accused is released on bail.

I so order.

DATED at MOROGORO this 30th day of November, 2022.



M. J. CHABA

JUDGE

30/11/2022

Court:

Delivered at my Hand and Seal of the Court in Chambers this 30th day of November, 2022 through Video Conferencing whereas Ms. Veronica Chacha, learned State Attorney for the Respondent / Republic, Mr. Josbeth Kitale, learned Advocate for the Applicant and the Applicant who is detained at Keko Prisons appeared were remotely present.



M. J. CHABA

JUDGE

30/11/2022

Court:

Right of Appeal to the parties fully explained.




M. J. CHABA

JUDGE

30/11/2022