

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

MISC. CRIMINAL APPLICATION NO. 29 OF 2022

FREDDY KAKIKO RUJWAHUKA.....APPLICANT

VERSUS

OFFICER COMMANDING STATION

(CHUMBAGENI POLICE STATION).....1st RESPONDENT

OFFICER COMMANDING DISTRICT OF TANGA.....2nd RESPONDENT

REGIONAL POLICE COMMANDER OF TANGA.....3rd RESPONDENT

INSPECTOR GENERAL OF POLICE OF TANZANIA.....4th RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTION (DPP).....5th RESPONDENT

RULING

Date of Last Order: 18/11/2022

Date of Ruling: 02/12/2022

MANYANDA, J.

On 02/12/2022, I dismissed this application and reserved the reasons which I now give hereunder.

In this matter the Applicant Freddy Kakiko Rujwahuka moved this Court under a certificate of utmost extreme urgency to issue a writ of Habeas Corpus under Sections 390(1)(a) and (b) and 391 of the Criminal Procedure Act, [Cap. 20 R. E. 2022] for orders that: -



- (a) This Honourable Court be pleased to order the Respondent or any person acting on their behalf to release the Applicant from unlawful detention or custody and set him at liberty;
- (b) In the alternative be pleased to order the Respondents give reasons why the Applicant should not be set at liberty or released on bail according to the laws;
- (c) Order prohibiting the Respondents from unlawfully detaining the Applicant for longer period of time than permitted by law;
- (d) Order the Respondents pay compensation to the Applicant for illegal and unreasonable detention;
- (e) Costs of the application be provided for; and
- (f) Any other relief(s) deemed fit be granted.

The application was heard orally, whereas the Counsel for the Respondents did not file a counter affidavit, hence their submissions were limited to law.

When the application came for hearing on 18/11/2022, the Respondent's Counsel Ms. Tussa Mwaihesya, learned State Attorney, raised a legal issue that the application was unmaintainable because a charge of murder against the Applicant was already filed in Court and read to him. That since the Court had no jurisdiction to try it, the



Applicant was not required to plead to it. The State Attorney submitted that the charge was filed on the same date 18/11/2022 in the Court of the Resident Magistrate of Tanga before Hon. Massati, PRM.

On his side the Counsel for the Applicant Mr. Thomas Kitundu, learned Advocate, maintained that the application was proper before this Court because there has been no any charge sheet presented nor stated before which magistrate the Applicant was arraigned. Then he went on submitting in its support. He submitted that the six orders prayed for in the chamber summons be granted.

He argued that the Applicant was arrested by Police on 28/10/2022 and was still been detained by them up to until 02/12/2022. That the arrest and detainment is unlawful and the Applicant is sick suffering from diabetes and hypertension with two hernia surgery operations, hence needed intensive medical care which, according to him, the Applicant is missing when he is in custody. He prayed for the Applicant to be released and the orders granted.

When I was composing the ruling I found it expedient to call for the record from the Court of the Resident Magistrate in respect of a Murder Case No. 18 of 2022 which was availed to me.



Upon perusing the same I found that there is indeed criminal committal proceeding No. 18 of 2022 filed in the Court of the Resident Magistrate.

That the accused in that case is one Fred Kakiko Rujwahuka arraigned before that Court presided over by Hon. Massati, Principal Resident Magistrate charged with Murder, Contrary to Sections 196 and 197 of the Penal Code, [Cap. 16 R. E. 2022]. That the accused is remanded in remand prison because that offence is unbailable. Hence the Applicant is in lawful custody pursuant to a lawful order of the Court until on 30/11/2022 when it was ordered the Applicant to be brought before it.

As I stated above, this application was brought under Sections 390(1) (a) and (b) and 391 of the Criminal Procedure Act. Under these provisions, this Court is empowered to exercise its criminal jurisdiction to issue any writ whenever it thinks fit to so direct, that any person within the limits of Mainland Tanzania be brought up before it and be dealt with in accordance with the law, or that any person illegally and improperly detained in public or private custody be set at liberty.



As it can be seen powers under these provisions is exercisable where it is established that there is a person unlawfully or illegally detained in custody. The Court of Appeal stated in the case of **Abdallah Mohamed Malenga vs. Regional Crimes Officer and 4 Others**, Criminal Appeal No. 143 of 2019 (unreported) as follows: -

*"The question which follows here is whether the High Court erred in its decision. Before we determine this question, we would like to restate the principle regarding the writ of habeas corpus. In the case of **Mary Vitus Temu vs. RPC of Njombe and Another**, Criminal Appeal No. 339 of 2017 (unreported) the Court stated thus: -*

'We need to emphasize that it is now well established that the writ of habeas corpus will only issue where it is demonstrated that the person to whom the writ is sought is in the unlawful custody of the Respondent''

In that case the Court of Appeal also took inspiration from a Kenyan case of **Mwangolo Kiguzo vs. Republic**, Misc. Criminal Application No. 164WA of 2017 (unreported) where the said Kenyan Court after referring to its earlier case of **Abdinasir Ahmed Mohamed vs. Republic** [2015] e-KLR in which it was stated that:-



"A writ of habeas corpus shall be enforced when the Applicant demonstrates that the subject is in the unlawful custody of the Respondent"

From these authorities, it is clear that in order for a writ of habeas corpus to issue it must be proved that the Applicant is in the unlawful custody of the Respondents.

In this matter after going through the record in the criminal committal case No. 18 of 2022, this Court took judicial notice that the Applicant is now in lawful custody pursuant to a lawful court order, after been presented in Court by the Respondents. Hence, the application has been overtaken by events. If the complainant is on bail, I think that will be a different matter altogether.

In the circumstances, this application is non-meritorious for been overtaken by events. It stands to be dismissed. Order accordingly.

DATED at **TANGA** this 02nd day of December, 2022.




F. K. MANYANDA
JUDGE