

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MWANZA
AT MWANZA**

MISC. CRIMINAL APPLICATION NO. 27 OF 2021

(Originating from Criminal Session Case No. 55.2021 in the High Court of Tanzania
at Mwanza Registry)

**LUTELA S/O PIMA & ANOTHER.....APPLICANTS
VERSUS
THE REPUBLIC..... RESPONDENT**

RULING

7th & 9th March, 2022.

Itemba, J.

This is an application for bail pending trial made under Section.148(1) of the Criminal Procedure Act, Cap 20 R.E. 2019, herein Cap 20. The applicants in this application, Lutela s/o Pima and Augustino Lwela, have filed this application through chamber summons supported by a joint affidavit deponed by both of them, it is also filed under Certificate of Urgency.

The applicants were originally arraigned before the District Court of Chato at Geita facing the charge of ***Conspiracy to Murder contrary*** to section 215 of the Penal Code Cap 16 R.E 2019, herein Cap 16 for committal procedures later on admitted before the High Court in a criminal session case No.55 of 2021. The offence being bailable, the applicants brought this application before this court prayed the court to grant for bail pending the determination of their trial.

It is alleged that on the material dates at Mtundu 'A' village within Chato District in the Region of Geita the applicants did jointly and together conspire to murder one Robert s/o Kahindi.

During the hearing of this application, both applicants fended themselves, while the Respondent was represented by the learned senior state attorney, Ms. Meriyasinta Lazaro. The 1st applicant ~~submission~~ briefly prayed to be granted bail because of the health issues that he cannot see properly and he is in need of a quick treatment, it's so hard to be treated inside four walls of the prison. The 2nd applicant submitted that he is suffering from diabetes and he prayed to be granted a bail.

Both applicants stated that they have reliable sureties.

In reply, Ms Lazaro submitted that they do not object the application as the offence is bailable. She however prayed for the court to be set conditions which will enable the applicants to be available when required to appear before the court.

I have considered the applicant's affidavit supporting the application, submissions by both parties and the fact that the offences which the applicants stand charged with is bailable. This court is faced with one issue as to whether the applicants are eligible to be granted bail. In answering this issue, I would like to remind myself of the jurisdiction

of this court regarding bail application as stipulated under the laws of the country and different case laws, firstly the fact that bail is a constitutional right **Article 13(6)(b)** of the Constitutional of United Republic as amended which provides for the presumption of innocence until a person is proven guilty in the court. To narrow down the scope of law, the Criminal procedure Act, specifically under section 148 of Cap 20, has also provided forailable and nonailable offences. The applicants in this particular application are facing charge of conspiracy to murder contrary to section 215 of Cap 16, which is among of theailable offences as it was rightly submitted by the applicants, and that this application has not been objected by the respondent being an officer of the court.

Under these circumstances, I find it appropriate to allow the application.

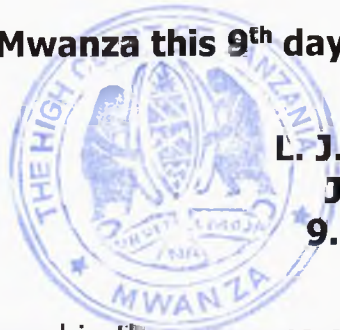
However as prayed by the respondent this court will allow this application pursuant to section 148 of Cap 20 RE 2019. Hence the applicants will be released on bail upon fulfilling the following conditions:-

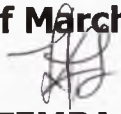
1. The applicants should execute a bond of Tanzanian Shillings four million (**Tshs. 4,000,000/=**) each or properTy equivalent to that amount.

2. Each of the applicants, must have two reliable sureties' citizens of the United Republic of Tanzania and resident of the local jurisdiction of the court who shall each sign a bond of Tanzanian Shillings Two Million **(Tshs. 2,000,000/=)** or submit proof of ownership of immovable properties valuing the same.
3. The sureties must be residents of Geita region with recognized place of abode, and must have introduction letter from their local authority together with the National Identification Card.
4. The applicants should not leave jurisdiction of this court without prior permission of this Court.
5. The applicants will report to the office of the Regional Crimes Officer (RCO)'s Office Geita, once, at the end of every month starting from March 2022 until their case is finally heard and determined.
6. The applicants must attend their case once summoned to appear before the court.
7. The office of Deputy Registrar will approve the sureties and bond documents before the applicants are released on bail and shall ensure that the bail conditions and terms thereof are complied with.

It is so ordered.

DATED at Mwanza this 9th day of March, 2022.




**L. J. ITEMBA
JUDGE
9.3.2022**

Ruling delivered in the presence of both parties.


**L. J. ITEMBA
JUDGE
9.3.2022**