

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA DISTRICT REGISTRY

AT SONGEA

MISCELLANEOUS CRIMINAL APPLICATION NO. 09 OF 2022

ALEXANDER DAUDI MAGOLA 1ST APPLICANT
JAMES SAMSON MAHUNDI 2ND APPLICANT
MOHAMED IBRAHIM HUSSEIN 3RD APPLICANT
HASSAN RAJAB SALUM 4TH APPLICANT

VERSUS

THE REGIONAL POLICE COMMANDER – RUVUMA 1ST RESPONDENT
REGIONAL CRIMINAL OFFICER 2ND RESPONDENT
OCD SONGEA DISTRICT 3RD RESPONDENT
OC CID SONGEA DISTRICT 4TH RESPONDENT
OCS SONGEA CENTRAL POLICE 5TH RESPONDENT

RULING

Date of last order: 06/06/2022

Date of Judgment: 06/06/2022

MLYAMBINA, J.

The instant application was brought by way of chamber summons made under *section 390 (1) (a) of the Criminal Procedure Act [Cap. 20 R.E. 2019]* and *section 392A (1), (2) of the Criminal Procedure Act [Cap. 20 [R.E. 2019]* as amended by *section 24 of the Written Laws (Miscellaneous Amendments) Act, Act No. 3 of 2011*. Apart from any other

relief(s), the Applicants beseeched this Court be pleased to give direction to the Respondents that the Applicants be brought up before the Court to be dealt according to the Laws of the land. In support of the application, learned Counsel Eliseus Ndunguru sworn an affidavit on behalf of all the Applicants.

On 6th day of June, 2022 when the application came for hearing, learned State Attorney Venance Mkonongo informed the Court that the Applicants were arraigned and charged before the Songea District Court at Songea since on 1st day of June, 2022. He therefore, prayed this application be marked overtaken by events.

In reply, learned Counsel Eliseus Ndunguru conceded that the Applicants were arraigned and charged on 1st day of June, 2022 as submitted by learned State Attorney Venance Mkonongo.

In the light of the afore facts, primarily this is an application for *Harbeas Corpus*. In addition to the cited provisions moving the Court, it could also be made under *Rules 2 and 7 of the Criminal Procedure (Harbeas Corpus) Rules, G. N. No. 150 of 1930*.

It must be re – called that an order of *Harbeas Corpus* is meant to protect right to liberty, as a human right. Right to liberty guarantees freedom from arbitrary arrest, imprisonment, confinement, detention, deportation or any other arbitrary deprivation of freedom. The right to

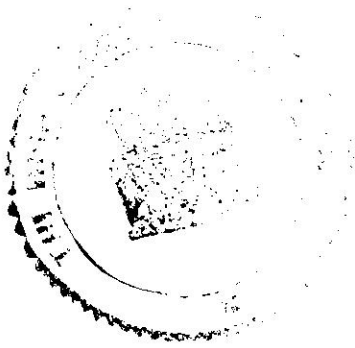
liberty or personal freedom is guaranteed under *Article 15 of the Constitution of the United Republic of Tanzania, 1977* which provides:

Every person has the right to freedom and to live as free person.

However, the right to liberty is not absolute. Under *Article 15(2)(a) and (b) of the Constitution of the United Republic of Tanzania (supra)*, there can be deprivation of an individual freedom in accordance with procedures prescribed by law or in execution of the Court Order or Sentence or for Public interest as per *Article 30 (1) and (2) of the Constitution of the United Republic of Tanzania (supra)*.

Given the fact that both learned State Attorney Venance Mkonongo and learned Counsel Eliseus Ndunguru concedes that the Applicants were arraigned and charged before the Songea District Court at Songea on 1st day of June, 2022, I find that the Applicants are no longer arbitrary or illegally detained as alleged in the supporting affidavit.

In the premises, the application is hereby marked overtaken by events. Order accordingly.



Y. J. MLYAMBINA

JUDGE

06/06/2022

Ruling delivered and dated 6th day of June, 2022 in the presence of learned Counsel Eliseus Ndunguru for the Applicants and learned State Attorney Venance Mkonongo for the Respondents.



Y. J. MLYAMBINA

JUDGE

06/06/2022