

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)

THE HIGH COURT

(MUSOMA SUB REGISTRY)

AT MUSOMA

Misc. CRIMINAL APPLICATION No. 11 OF 2023

IN THE MATTER OF APPLICATION FOR BAIL PENDING

DETERMINATION OF CRIMINAL SESSIONS CASE No. 158 of 2022

(Arising from the District Court of Tarime at Tarime in P.I No. 5 of 2022)

NYAIMANO GHATI MARWA APPLICANT

Versus

REPUBLIC RESPONDENT

RULING

26.05.2023 & 26.05.2023

Mtulya, J.:

On 15th July 2022, this court was invited in **Misc. Criminal Application No. 31 of 2022** (the application) to resolve bail application pending hearing and determination of **Criminal Sessions Case No. 23 of 2022** (the case) between **Republic** (the respondent) and **Mr. Mwita Juma @ Machango** (the applicant).

The applicant was prosecuted in the case for allegation of an act intended to cause grievous harm (the offence) against **Mr. Majogora John** (the victim) by use of a sharp weapon *panga* which allegedly directed to sensitive parts of the victim's body called left shoulder and left hand.

The alleged offence is enacted under section 222 (a) of the **Penal Code** [Cap. 16 R.E. 2019] (the Code) and the applicant in the application was well aware that the offence is bailable hence approached this court praying for bail pending hearing of the case. In order to persuade this court in favor of the application, the applicant had registered three (3) reasons in favor of the application *viz.* first, the law regulating bail allows bail to the applicants who are prosecuted for the alleged offence; second, the applicant was previously granted bail in the **District Court of Musoma at Musoma** (the district court) in **P.I No. 13 of 2020** (the PI case) and did not violate bail conditions; and finally, the applicant has reliable sureties who are able to execute bail bond.

In the application, this court had granted bail with a total of seven (7) conditions for the applicant to fulfil to cherish freedom of movement. Before arriving at the Ruling, this court had considered authorities in sections 148 (1), (6) & (7), 392A (1) & (2) of the **Criminal Procedure Act** [Cap. 20 R.E. 2019] (the Act) and article 13 (6) (b) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2019] (the Constitution), and a bunch of precedents in **Mwanaidi Nyahori & Another v. Republic**, Misc. Criminal Application No. 2 of 2022; **Francis Davis Mchacky & Ten Others v, Republic**, Misc. Criminal Application No. 14 of 2022; **Salum Abeid Mbaya & Ten Others v. Republic**, Consolidate Misc.

Economic Applications Nos. 68 & 69 of 2019; and **Prof. Dr. Costa Ricky Mahalu & Another v. The Hon. Attorney General**, Misc. Civil Cause No. 35 of 2007).

Today morning, **Mr. Nyaimano Ghati Marwa** (the present applicant) had instructed **Mr. Juma David Mwita**, learned counsel to appear in **Misc. Criminal Application No. 11 of 2023** (the present application) lodged in this court to pray for bail pending hearing and determination of **Criminal Sessions Case No. 158 of 2022** (the session).

In the pending session, the present applicant is prosecuted for acts intended to cause grievous harm to **Edina John @ Magesa** contrary to section 222 (a) of the Code. Following the instruction of the present applicant, Mr. Mwita appeared in this court today morning and submitted, in brief, that the present applicant is awaiting hearing of the sessions and prays for bail pending determination of the matter. In order to persuade this court to grant the present application, Mr. Mwita had reproduced the same reasons registered by the applicant during the hearing of the application on 5th July 2022.

The prayer and reasons were not protested by **Mr. Tawabu Yahaya Issa**, learned State Attorney for the respondent. However, Mr. Tawabu stated that the present applicant has to meet bail conditions that will be listed by this court. This is a

court of law and justice and is guided by the law in enactment and precedents. The present application meets the requirement of the enactment in sections 148 (1), (6) & (7), 392A (1) & (2) of the Act and precedent of this court in **Mwita Juma @ Machango v. Republic** (supra).

Having noted the indicated enactment and precedent, I am moved to grant the application in favor of the applicant. However, in order to be released from prison custody and cherish the principle of presumption of innocence and freedom of movements, the applicant must fulfil the following listed conditions:

1. The applicant must sign bail bond to the tune of Tanzanian Shillings Three Million Only (3,000,000/=);
2. The applicant must register two (2) reliable sureties who are able to execute bail bond amounting to Tanzanian Shillings One Million Only (1,000,000/=) each and must be in possession of National Identification Card issued by the National Identification Authority (NIDA) or if he is employed in government services, he must register work identification card;
3. The sureties must be residents of Mara Region and verify their stay in the region by presenting introduction letters from their respective hamlet or mtaa chairpersons;

4. The applicant should not leave Mara Region without prior written permission of the **Deputy Registrar** of this Sub Registry;
5. The applicant must report to the **District Magistrate In-Charge of Tarime District Court at Tarime** and the In-Charge should communicate the report to the **Deputy Registrar** of this Sub Registry once on every last Monday of every Month;
6. The applicant must surrender his passport or any other travelling documents to the **Deputy Registrar** of this Sub Registry; and
7. Bail conditions set out in this Ruling are to be supervised by the **Deputy Registrar** of this Sub Registry.

It is so ordered.



F.H. Mtulya
Judge
26.05.2023



This Ruling was delivered in Chambers under the Seal of this court in the presence of **Mr. Tawabu Yahya Issa**, learned State Attorney for the respondent and in the presence of **Mr. Juma David Mwita**, learned counsel for the applicant.



F.H. Mtulya
Judge
26.05.2023