

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO.42 OF 2023

(Originating from Masasi District Court at Masasi in P.I. No.9 of 2022 and in the High Court of Tanzania at Mtwara in Criminal Session No.19 of 2023)

HAESHI KASSIMU ISSA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

31/7/2023

LALTAIKA, J.:

The applicant, **HAESHI KASSIMU ISSA**, was charged and committed to this court on 23/07/2023 for the offence of Manslaughter in P.I. No. 19 of 2022 from Masasi District Court. The applicant is allegedly that on 18th day of July, 2022 **at Msifuni area within Masasi District** in Mtwara Region to have unlawfully caused the death of one **UPENDO OLIVA MROPE**.

The applicant has brought this application for bail pending hearing and determination of the offence of Manslaughter. The application is brought under Section 148(2), (3) and 392A (1) and (2) of the Criminal Procedure Act [Cap. 20 R.E. 2022] any other enabling provision(s) of the law, the applicant is moving this court to grant him bail pending trial of the P.I. No.14

of 2022. The application is also accompanied with the Certificate of Utmost Urgency of Mr. Issa Chiputula, learned Advocate. In addition, the application is supported by an affidavit affirmed on 13/07/2023 by Mr. Issa Chiputula, learned Advocate. On the other hand, the application has been resisted by a counter affidavit sworn by Mr. Melchior Hurubano, learned State Attorney.

When this matter was called on for hearing today, the applicant appeared in person and was being represented by Ms. Anastazia Minja, learned counsel while the respondent was represented by Mr. Melchior Hurubano and assisted by Ms. Atuganile Nsajigwa, both learned State Attorneys.

Submitting in support of the application, Ms. Minja contended that the stands charged with the offence of Manslaughter. The learned counsel went on and contended that according to section 148(1), (2) and (3) of the Criminal Procedure Act [Cap.20 R.E. 2022], the offence is bailable. She stressed further that bail is a constitutional right as per article 13(6) (b) of the Constitution of the United Republic of Tanzania. Ms. Minja prayed this court to admit her client to bail and is ready to fulfil any conditions to be set by this court.

In response, Mr. Hurubano conceded that bail is a constitutional right. He contended that it includes the right to movement and presumption of innocence. The learned State Attorney admitted that the sections of the Criminal Procedure Act cited by the learned counsel, the offence is bailable. Nevertheless Mr. Hurubano submitted that the respondent prays this court to take into consideration the fact that the offence with which the accused is faced attracts a very high punishment, it is life imprisonment. To this end,

the learned State Attorney prayed that this court consider that the accused may run away to escape the possibility of the punishment mentioned. Mr. Hurubano submitted so because they have experienced the situation where the accused persons from boarder areas can easily move to the other side of the boarder making it hard for the authorities to bring them to face the charges.

In very short rejoinder, Ms. Minja contended that as this court considers the application, it will take into consideration that the applicant has reliable sureties and a permanent place of abode. She emphasized that the sureties will ensure appearance of the applicant whenever his case is called and they are persons of good standing in the society. The learned counsel submitted further the sureties have fixed assets which are ready and willing to be disposed off as per the conditions.

Having carefully scanned the application and submission for and against the application, I am inclined to exercise the role of this court to either grant or refuse the application with reasons thereof.

There is no doubt that the applicant is charged with an offence which is bailable. Nevertheless, it is the duty of this court to satisfy itself that granting bail to an accused/applicant may interfere with the investigation of the case (See section 148(1) of the CPA) and does not jeopardize the accused person's safety(see section 148(4) of the CPA). In absence of such threats, bail remains the right of an accused person in light of the principle of presumption of innocence. This was articulated by this court in **Patel vs. R** (1979) HCD No.391 and it was held that:-

"Man, whilst awaiting trial is as of right entitled to bail, as there is a presumption of innocence until the contrary is proved. I would say that the court should be guided by four main principles on the granting of the bail pending trial. The first and foremost is that the court should ask itself whether the accused would be available at the trial. Secondly, whether the accused is likely to commit further offence if he is allowed out in bail, in which case his character is certainly not irrelevant. Thirdly, whether the accused is likely to interfere with the investigation by influencing witnesses or otherwise, and fourthly, the gravity of the accusation and the severity of the punishment if conviction results."

Without prejudice to the above, it goes without saying that each case must be decided on its own merit. It has come to my knowledge that the applicant is yet to appear in this court for plea taking and preliminary hearing PH. I do not want to say that such an exercise is a new condition for granting of bail, not at all. My reasoning is that this court is devoid of the necessary information to enable it to make an informed and just decision. The court file from Masasi District Court is yet to reach this court. This court is not expected to make a balanced decision with that scanty information presented in the sworn affidavit. I will explain.

The learned Advocate for the applicant Ms. Minja for example, has told this court that her client is facing the charge of manslaughter. Although the learned State Attorney had no objection to that I still do not have the details of what kind of manslaughter it is. Whether it comes very close to murder or it is further down the scale of culpability.

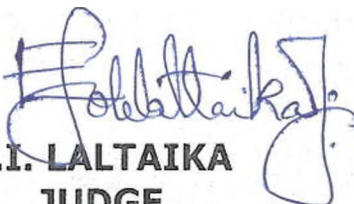
If a judge is given sufficient information, he/she can tell whether the type of manslaughter in question: **Unlawful Act Manslaughter (UAM)**, **Gross Negligence Manslaughter (GNM)** or **Reckless Manslaughter (RM)**. A glimpse of the relationship between the accused and the deceased would

also assist the court in determining whether releasing the applicant on bail would not be to the detriment of peace and tranquility in the community.

Premised on the above, this application is hereby **struck out for** lack of sufficient information to enable the court to make an informed decision.

It is so ordered.




E.I. LALTAIKA
JUDGE
31.7.2023

Court: Right of appeal in respect of the bail conditions fully explained.




E.I. LALTAIKA
JUDGE
31.7.2023