

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA SUB-REGISTRY
AT TABORA**

MISC. CRIMINAL APPLICATION NO. 12647 OF 2024

*(Arising from Criminal Case No. 2540 of 2024 pending in the Resident Magistrate's
Court of Tabora)*

KASSIMU DAUDI KASSIMU WALATA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of Last Order: 27/05/2024

Date of Ruling: 03/06/2024

KADILU, J.

In the Resident Magistrate's Court of Tabora, the applicant is indicted with thirty (30) counts of severe trafficking in persons contrary to Sections 4 (1) (a) and 6 (2) (a) of the Anti-Trafficking in Persons Act, No. 6 of 2008 as amended. The prosecution alleges that on diverse dates between December 2023 and January 2024 at Ushokola Village within Kaliua District in Tabora Region, the applicant recruited 30 persons who are below the age of 18 years for involuntary servitude. The matter is still pending in the Resident Magistrate's Court of Tabora in Criminal Case No. 2540 of 2024. He filed the instant application in this court under a certificate of urgency praying for the court to grant him bail pending trial as per Section 148 of the Criminal Procedure Act (CPA).

The application is supported by the applicant's affidavit in which he stated that he is facing health problems so, he needs special care that is not available in prison custody. The prosecution filed a counter affidavit opposing

the application by refuting all the allegations by the applicant. When the application was called on for hearing, the applicant appeared in person, without legal representation whereas the respondent enjoyed the legal services of Ms. Suzan Barnabas, the learned State Attorney.

In opposition to the application, Ms. Suzan argued that the applicant is charged with human trafficking under the Ant-Trafficking in Persons Act, which has no bail under Section 148 5 (a) (vi) of the CPA. She thus prayed for the application to be dismissed because the offence the applicant is charged with is unbailable. She added that this court has not yet been seized with the requisite jurisdiction to grant bail to the applicant as the matter is still pending in the RM's Court of Tabora at the preliminary stages under Section 246 (1) of the CPA. She explained that there is no committal order to confer jurisdiction to this court. Ms. Suzan cited the case of ***Dodoli Kapufi & Another v. R.*** Criminal Rev. No. 01 of 2008, Court of Appeal at Mbeya, and ***DPP v. Brokeem Mohamed Ally & Others***, Criminal App. No. 217 of 2019, Court of Appeal at Mwanza.

The learned State Attorney elaborated that the charges against the applicant are serious hence, he needs to be in custody to ensure his availability for trial and the protection of witnesses in this case. She referred to the case of ***A.G. v. Dickson Paul Sanga***, Civil Appeal No. 175 of 2020, Court of Appeal at Dar es Salaam in which the purpose of denying bail to the accused facing serious offences was discussed. Ms. Suzan urged the court to dismiss the application for want of merits.

When the applicant was given the floor, he told the court that he had been suffering from heart disease and high blood pressure for a long time

and that currently, in prison there is no proper treatment for him. He alleged that he requested to be taken to a referral hospital and was told he would be informed, but no steps have been taken. He explained that he used to attend the medical clinic in Dar es Salaam but has not used the medicine since he was arrested about 3 months ago. The applicant affirmed that he is charged with a bailable offence and is triable by the High Court which is why he filed the instant application here. He prayed for the application to be granted because he had never been granted bail and jumped or breached bail conditions. He requested the court to consider his health condition and grant him bail as he has reliable sureties and will be available for trial.

Having set out a brief background of the case and submissions of the parties, I find it imperative to state that the primary purpose of remanding an accused person in custody is not to punish him but to ensure that he will appear to take his trial and not to seek to evade justice by leaving the jurisdiction of the court. *See Jaffer v. R.*, [1972] HCD n. 92. Nevertheless, courts are guided by the laws in exercising powers to grant bail to the accused persons. Regarding the question of jurisdiction, it should be noted that a subordinate court, during the pre-committal period under Section 245 (1) of the CPA read together with Section 148 (1), is empowered to admit an accused to bail for a bailable offence triable by the High Court.

That does not, however, bar the High Court from determining the accused person's application for bail particularly because the court enjoys inherent powers. Thus, I agree with the learned State Attorney that the applicant could apply for bail in the RM's Court since both the High Court and subordinate courts have the power to admit to bail accused persons

before them for all bailable offences. The position was stated in the case of ***Dodoli Kapufi v R., (supra)***.

I now determine the issue as to whether this application is meritorious or otherwise. Section 148 (5) (a) (vi) of the CPA is clear that a police officer in charge of a police station or a court before whom an accused person is brought or appears ***has no power to admit that person to bail if he is charged with trafficking in persons*** under the Anti-Trafficking in Persons Act. In ***Emmanuel George Munisi & Another v. R.,*** Misc. Economic Case No. 5 of 2018, it was held that:


"While powers of the court to preside over matters pertaining to bail applications may be both inherent and statutory, the process and determination of whether bail should be granted or not, are dictated upon by statute. This is an instrument under which a charge is preferred. It is the basis on which the court can make a finding as to whether this is a fit case for admitting the accused person to bail. Such legislation will provide clearly if the offence with which the bail applicant is charged is bailable or otherwise. If the offence is bailable, the Court will go ahead and determine if, on the basis of the affidavit and arguments in support, conditions for such a grant have been met. If the offence is non-bailable the court's potency becomes totally nullified."

As hinted, the applicant herein is charged under sections 4 and 6 of the Anti-Trafficking in Persons Act. He informed the court that his health condition needs special attention which is currently not available in prison custody. The provisions of the law under which the applicant is charged do not restrict the granting of bail to the accused persons. However, the provisions of Section 148 (5) (a) (vi) of the CPA provide no room for considering the special circumstances of the applicant based on his ill health.

It completely shuts the doors against the applicants charged with trafficking in persons regardless of any prevailing conditions.

In view of this, the offence with which the applicant is charged affects this court's powers in granting him bail. Therefore, the court dismisses the application because the offence is unbailable. The applicant's prayer for bail pending trial is hampered by the exclusion of the court's jurisdiction imposed by the law. In the upshot, this application fails.

Order accordingly.



KADILU, M.J.

JUDGE

03/06/2024

Ruling delivered in chamber on the 3rd Day of June, 2024 in the presence of the applicant and Mr. Steven Mnzava, State Attorney for the respondent, the Republic.



KADILU, M.J.

JUDGE

03/06/2024.