

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISCELLANEOUS CRIMINAL APPLICATION NO. 16474 OF 2024

JOHN MWITA THIMAS.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING OF THE COURT

03/07/2024 & 04/07/2024

Kafanabo, J.:

This is a ruling emanating from a bail application filed in this court on 18th June 2024. The application is brought by way of chamber summons supported by an affidavit of Mr. Onyango Otieno, Advocate for the Applicant. The application is made under the provisions of sections 148(1) of the **Criminal Procedure Act, Cap. 20. R.E. 2022.**

The substance of the prayer as set out in the chamber summons was that this court be pleased to admit the Applicant to bail pending hearing of the Criminal Session Case No. 12535 of 2024.

A brief background of the matter is that the Applicant stands charged before this court on one count of acts intended to cause grievous harm contrary to section 222(a) of the **Penal Code, Cap. 16 R. E. 2022.** It is alleged that the Applicant herein on 31st day of October 2023, at Nyakunguru Village within the Tarime District in the Mara Region, with intent to maim,

unlawfully caused grievous harm to Sabai Samwel Nyamhanga by cutting his left arm and cutting off three fingers on the right arm with a machete.

It is also gathered from the affidavit and the record of the court that, after the completion of the investigation, on 12th June 2024, the Applicant was arraigned at the District Court of Tarime in Preliminary Inquiry No. 1149 of 2024 for committal proceedings in respect of the above-mentioned offence.

Moreover, it is on record that during the whole time from 17th January 2024 to 12th June 2024 in respect of which the Preliminary Inquiry was pending, the Applicant was at liberty on bail. However, after completion of the committal proceedings, where the Applicant was committed to this Court for trial, the bail he enjoyed was cancelled and the Applicant was remanded pending trial by the High Court. It thus necessitated the Applicant to make this application for bail pending the determination of the criminal case against him.

It was also averred in the affidavit supporting the application that the offence in respect of which the Applicant is alleged to have committed is yet to be proved and that he will suffer irreparably if bail is not granted.

When the application was called for hearing Mr. Onyango Otieno, learned Advocate, represented the Applicant, and Mr. Felix Mshama, learned State Attorney, represented the Respondent.

Supporting the application, the Applicant's learned counsel commenced his submission by adopting the affidavit supporting the application as part of his submission.

Besides, the learned counsel submitted that the committal proceedings were duly conducted in the District Court of Tarime on 12th June 2024 and thus the bail which was initially granted was cancelled.

The Applicant's learned counsel also submitted that the Applicant was on bail before committed to this court for trial, that is from 17th January 2024 to 12th June 2024 when he was committed to this Court for trial and he never jumped bail. Further, it was argued that because the offence the Applicant is charged with is bailable and that the Applicant has reliable sureties, the application be allowed.

Mr. Mshama for the Respondent submitted that the Respondent does not object to the application for bail for three reasons: first, was that the offence in respect of which the accused is charged under section 222(a) of the **Penal Code, Cap. 16. R.E. 2022** is bailable. Second bail is a constitutional right of the Applicant, and since the Applicant has not been convicted, he is presumed innocent under article 13(6)(b) of the **Constitution of the United Republic of Tanzania, 1977** as amended.

The learned State Attorney also submitted the court may be pleased to admit the Applicant to bail provided that the conditions that will be given by the court are fulfilled and adhered to by the Applicant.

After hearing the learned counsels' submissions, this court has to determine whether the application has merits.

In the light of the facts stated in the affidavit supporting the application which were not controverted by the Respondent, and the submissions of the learned counsels in respect of which the Respondent supported the

application before the court, and in terms of section 148(1)(6)(7) of the **Criminal Procedure, Act, Cap. 20 R.E. 2022**, and Articles 13(6)(b) and 17 of the **Constitution of the United Republic of Tanzania, 1977** as amended this court is satisfied that:

- i. The offence in respect of which the Applicant is charged is bailable.
- ii. Bail is a constitutional right as provided in the constitution of the United Republic of Tanzania, 1977 as amended.
- iii. The Applicant adhered to the bail conditions as issued by the District Court of Tarime before being committed to this court for trial.
- iv. The Applicant has undertaken to adhere to the bail conditions as will be ordered by the Court.

In light of the foregoing, the application for bail pending hearing and determination of Criminal Session Case No. 12535 of 2024 is granted. Therefore, taking into account the nature of the offence committed by the Applicant against the victim, the Applicant is hereby admitted to bail on the following conditions:

1. The Applicant must sign a bail bond to the tune of Tanzanian Shillings Three Million Only (3,000,000/=);
2. The Applicant must register two (2) reliable sureties who each shall execute a bail bond of Tanzanian Shillings One Million Only (1,000,000/=) each and must have a national identification card issued by the National Identification Authority (NIDA), or if they are employed

in the Government of the United Republic or any other reputable/trustworthy employer, they must register their employment identification cards plus introduction letters from their current employer(s). Identity cards to be submitted must be original accompanied by certified copies of the same. Upon satisfaction of their authenticity, the original identity cards shall be returned to the bearers;

3. The sureties must be residents of the Mara Region and should verify their residence in the region by presenting introduction letters from their respective local government leaders;
4. The Applicant should not leave Mara Region without prior written permission of the Hon. Deputy Registrar of this Court at Musoma Sub-Registry.
5. If the Applicant possesses a passport or any other travelling document, he must surrender the same to the Hon. Deputy Registrar of this Court at Musoma Sub-Registry;
6. The Applicant must report to the Hon. Deputy Registrar of this Court at Musoma Sub-Registry on the first Tuesday of every month, and shall sign a specific attendance register; if the day on which he is required to report is a public holiday he shall report on the next working day.
7. Given the nature of the allegations against the Applicant, he is ordered to abstain from visiting the premises and locality within which the victim of his alleged actions live and, except in the presence of law enforcement agencies and where safety is guaranteed, the Applicant

shall, by all means necessary, keep a distance of at least fifty (50) metres between him and the victim whenever they cross paths.

9. The Applicant's sureties shall undertake to make sure that the accused person is available and enters an appearance in court whenever required;

The bail conditions listed in this ruling are to be administered by the Hon. Deputy Registrar of this Court at Musoma Sub-Registry. Once bail conditions are satisfied, the Applicant (accused person) is reminded to make full adherence/compliance to the court's appearance whenever required to do so by the court, otherwise the bail shall be cancelled.

It is so ordered. Right of appeal explained.



K. I. Kafanabo

Judge

04/07/2024

The ruling was delivered today in the presence of Mr. Felix Mshama, State Attorney, representing the Republic, and in the presence of Mr. Samson Samo, Advocate h/b of Mr. Onyango Otieno Advocate for the Applicant.

A blue ink signature of K. I. Kafanabo.

K. I. Kafanabo

Judge

04/07/2024