

Bail

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO. 64 OF 2007

CRIMINAL SESSIONS CASE NO. 29 OF 2007

IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM

INYONGO MWITA MARIBA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

Date of last order - 18/10/2007

Date of Ruling - 23/11/2007

RULING

MIHAYO, J.:

This is an application for bail pending trial by Inyongo Mwita Mariba who stands charged of three counts of manslaughter contrary to section 195 of the Penal Code. The respondent who is the Director of Public Prosecutions is not objecting.

When I heard the application on 18/10/2007, I did not feel inclined to grant bail then because I needed more time to think on

the matter. If anything, this was a very bad manslaughter. Three children perished in horrendous circumstances. They were burned alive from a very careless act which is actually criminal.

In considering bail a court must take into account a lot of factors, the availability of the accused person to stand his trial is one of those factors. It was stated by this court (Lugakingira, J. as he then was) in the case **O.S. Mushi vs. Republic [1984] TLR 170**, at page 171 that:-

"A court called upon to consider granting bail is entitled to take into account all the circumstances pertaining to the case before exercising its discretion one way or the other."

I totally support that view, because first and foremost, it is the court that decides whether to admit and accused to bail or not. The court

must therefore satisfy itself that in the circumstances of the case it is safe and proper to grant bail.

In **Mushi v R.** (supra) the court had this to say:

"Further, I do not consider the acquiescence of the prosecution a decisive factor in these matters. It is certainly a factor which the court cannot ignore, but in the end the discretion whether, or not to grant bail is entirely in the court and it may decline, to exercise its discretion in favour of the accused notwithstanding the attitude of the prosecution."

The court had opportunity to make reference to the case of **Rididas Sarongi & Another v R. [1975] TLR n.58** where this court (Mwakasendo J. as he then was) said:-

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The court had opportunity to make reference to the case of **Rididas Sarongi & Another v R. [1975] TLR n.58** where this court (Mwakasendo J. as he then was) said:-

"The question of whether or not bail should be granted must be decided by the magistrate himself and not by the prosecuting authorities."

In the present case, the Republic said they have no objection to bail:-

"But we pray that the conditions of bail be such as to make applicant appear in court. The offence can attract life sentence and this may scare the applicant."

The offence is serious. If proved it will surely call for severe sentence. After giving it a lot of thought, in the interest of justice, I do not think that it is either safe or desirable that the applicant be granted bail in this case. This application is hereby dismissed.

T.B. MIHAYO

JUDGE

Delivered in chamber this 23rd November 2007 in presence of
the applicant and Ms Rushagara, State Attorney for the respondent.

A handwritten signature in dark ink, appearing to read 'T.B. Mihayo', is written over the printed name.

T.B. MIHAYO

JUDGE

23/11/2007