

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISCELLANEOUS CRIMINAL APPLICATION NO. 10 OF 2009

(Originating from Criminal Case No. 1168 of 2008 Resident
Magistrate's Court of Dar es Salaam at Kisutu)

FERDINAND MASAU.....APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

Date of hearing 14/05/2009

Date of Ruling 14/05/2009

14/05/2009

Coram: R. H. Sheikh, J.

For the Applicant - Mr. Mpoki, Advocate

For the Respondent - Mr. Ishengoma Kato, State Attorney

CC. Pili

RULING

R. SHEIKH, J.

This is an application for variation of the bail conditions imposed by the Kisutu Resident Magistrate's Court in Criminal Case No. 1168 of 2008. The application is brought under the provisions of section 149 of the Criminal Procedure Act 1985 Cap. 20 R.E. 2002. In criminal case No. 1168 of 2008 now pending at the Resident Magistrate's Court of Dar es Salaam at Kisutu the applicant is facing 28

counts of Failure without lawful excuse to pay to NSSF contributions liable to be paid.

Mr. Ishengoma learned State Attorney at the outset made it clear that the Republic does not oppose the application for variation of bail conditions. Citing Article 13 part B of the Constitution of the United Republic of Tanzania he submitted that a person is innocent before the law until proved guilty of the offence charged, that the restrictions of movement imposed on the applicant are excessive in view of the nature of the applicant's job as a doctor who provides medical services to patients and that the restrictions would affect the performance of his job which would not be in the public interest.

I have carefully considered the respective submissions by learned counsel. The relevant part of the bail conditions complained about and sought to be varied reads as follows:

"The accused also should surrender his traveling documents including the passport. The accused should not travel out of Dar es Salaam without leave of the court"

It is not disputed that the applicant is a doctor, a Heart surgeon as a matter of fact. In the applicant's affidavit it is stated that because of the nature of his work he often has to travel on duty and to attend meetings, and that due to the travel restrictions imposed in the bail conditions he had failed to attend several professional meetings, one being the 45th Annual meeting of the International Society of Thoracic Surgeons held in San Francisco from 24 – 28 January 2009. It is also evident from the affidavit evidence that on 13/01/2009 the applicant had written a letter to the Kisumu Resident Magistrate's Court seeking permission to travel to Dodoma during the parliamentary sessions but there was no reply from the Resident Magistrate's Court aforesaid.

Upon careful consideration of the reasons advanced by learned counsel I am satisfied that the restrictions on travel imposed are unreasonable and unwarranted and that it would be just in the circumstances of this case to grant the variation sought. The application for variation is accordingly granted. The applicant's travel documents, and passport will be returned to him.

For the avoidance of doubts the bail conditions aforesaid are varied and amended to the extent stated herein and will now read as follows:

The accused will be allowed to travel in and outside Tanzania subject to the condition that:- Whenever the applicant intends to travel outside Tanzania, prior to his departure, the applicant/accused shall by letter written by him or his advocate Mr. Mpoki, notify the Resident Magistrate in charge of the Kisutu Resident Magistrate's Court of the purpose of his travel abroad, the date of his departure and the expected date of his return to the country (Tanzania), with a copy of the letter to the Attorney General's Chambers and the OCCID Ilala District Dar es Salaam.

It is so ordered.




R. Sheikh

JUDGE

14/05/2009