

IN THE HIGH COURT OF ZANZIBAR
HOLDEN AT VUGA
CRIMINAL APPLICATION NO. 98 OF 2023
FROM CRIMINAL CASE NO. 56 OF 2023

BETWEEN

LUKMAN MOHAMED BACHU APPLICANT

V.

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

Dated: 18th October, 2023

S. HASSAN (J)

The applicant **Lukman Mohamed Bachu**, has moved this court under the provisions of **section 3(1)(a)&(b) of the High Court Act No. 2 of 1985 and section 225 (1) of the Criminal Procedure Act No. 7 of 2018** seeking for bail pending trial of **Criminal Case No. 56 of 2023**. The chamber application is supported by the sworn affidavit deposed by Mr Rajab Abdalla Rajab.

Brief background of this application is that, the applicant is charged in Criminal Case No. 56 of 2023 with Four Counts namely:

First Count: Tax Evasion contrary to section 44 (1) (e) and section 61 of Act No. 1 of 2012 of the laws of Zanzibar.

Second Count: Forgery contrary to section 335 (a) and 337 of the Penal Act No. 6 of 2018 of the laws of Zanzibar.

Third Count: Uttering of False Document, contrary to section 342 of the Penal Act No. 6 of 2018 of the Laws of Zanzibar, and

Forth Count: Money Laundering, contrary to sections 7 (1) (2) (a) and section 8 (a) of the Anti Money Laundering and Proceeds of Crimes Act No. 10 of 2009 and section 49 of Anti Corruption and Economic Crimes Act No. 1 of 2012 of the laws of Zanzibar

The applicant was arraigned on 29/8/2023 and denied all for counts and was sent to custody in Offender's Education Center (Chuo cha Mafunzo) pending the determination of his Criminal case.

During the course of hearing, the applicant was present in person and was also represented by the learned advocate Mr. Rajab Abdalla Rajab, assisted by learned advocate Mr Daud Kidiara, while the respondent /DPP was represented by Senior State Attorney Mr. Shamsi Saad.

On the merit of the application in hand, it is not disputed that, *the **First Count** of Tax Evasion contrary to section 44 (1) (e) and section 61 of Act No. 1 of 2012 of the laws of Zanzibar and **Forth Count** of Money Laundering, contrary to sections 7 (1) (2) (a) and section 8 (a) of the Anti Money Laundering and Proceeds of Crimes Act No. 10 of 2009 and section 49 of Anti Corruption and Economic Crimes Act No. 1 of 2012 of the laws of Zanzibar* facing the applicant falls in the list of non- bailable offences under **section 151 of the Criminal Procedure Act No. 7 of 2018 as amended**. Hence, ordinarily the applicant would have to be admitted to bail under the provision of **section 152 (1) (2) of the Criminal Procedure Act No. 7 of 2018**.

Furthermore, it is also not disputed that, there is no direct provision in our Criminal Procedure Act (supra) which obligates or mandates this Court to grant and admit bail in non- bailable offences except in the circumstances provided under the provision of **section 152 (1) (2) of the Criminal Procedure Act** (supra). Therefore it is worth to note that, **section 3(1)(a)&(b) of the High Court Act No. 2 of 1985 and section 225 (1) of the Criminal Procedure Act No. 7 of 2018** which the applicant has

move this court to assume jurisdiction is only general provisions which has filled the lacuna to allow the application of this nature to have access to the court for redress.

That being said, let me now turn my attention to the matter in hand, in his submission Mr Rajab is praying for bail with affordable conditions based on the reasons that are on paragraphs 4, 5 and 6 of the sworn in affidavit which he prayed to be adopted as part of the submission. He went on to submit that, the applicant has a history of Fistulectomy which requires attention and that the condition which the applicant is in presently is not suitable and conducive for his well being. Mr Rajab further submitted that there are signs that show the disease is coming back and therefore it is dangerous for the applicant health to remain in custody. Furthermore, Mr Rajab submitted that, the respondent counter affidavit is not objecting that the applicant has a history of Fistulectomy and that such disease was cured since 2019 and no current medical reports have been submitted by the applicant to show the current health condition of the applicant. In the end he prayed for the applicant to be admitted to bail so that he can travel to india and receive proper medical attention.

Advocate Kidiara, also made his submission in support of what has been submitted by Mr Rajab and went on to cite the case of **Abuu Bakar Mohamed Omar v. DPP, Criminal Application No 115 of 2022, High Court Zanzibar** to cement their position for bail application.

On the other side, Mr Shamsi, adopted his counter affidavit and objected this application and submitted that, the applicant is charged with non bailable offences in *Count One* and *Count Four*, furthermore the applicant has not shown sufficient grounds to be granted bail. He further submitted that, the reasons that the applicant is suffering with Fistulectomy disease has already been cured and treated in India since 2019 as per the attached medical reports supporting the application. Mr Shamsi went on to submit that, from the date the applicant was in India 2019 to date, four years has lapsed therefore the applicant is no longer suffering with such disease. Mr Shamsi went on to submit that, this court is not supposed to look at the applicant medical past medical history but with current medical reports in order to be convinced with the

applicant current situation and that the applicant has not provided any medical report from the education center dispensary or a report from a officer in charge of prison which states that the applicant disease of 4 years has come back and he cannot be cured in any hospitals in Zanzibar for him to travel to India.

With respect to the case authority cited by the applicant, Mr Shamsi submitted that, the case is distinguishable based on page 2 of the Ruling para 3 and 4. In the end he prayed for the application to be dismissed for lack of sufficient reasons.

In rejoinder, Mr Rajab submitted that, the nature of the applicant disease cannot be seen just by looking at the applicant physical condition and that the respondent is also obliged to show that the applicant is not suffering from the Fistulectomy disease.

Having heard both parties submissions, I have keenly digested the prayers in the application, submissions by the parties advocates and the provided authority, having done so, I am now in a position to make findings and conclude this matter.

Let me start by saying that, I am sober and mindful to the presumption of innocence until proven guilty as enshrined under **section 12 (6) (b) of the Constitution of Zanzibar, 1984**. And I am also mindful and aware to the fact that **section 151 of the Criminal Procedure Act** (supra) as amended, has provided for a series of offences which are non bailable among them are, **count one** and **count four** facing the applicant.

With that in mind, for the applicant to move this court to invoke its inherent powers to grant him bail with affordable conditions will be determined based on the sufficient reasons to be provided by the applicant.

Both parties in this application are not objecting to the fact that, according to the Medical Report attached in support of this application, the applicant had a history of Fistulectomy disease which he received medical attention in India in the year 2019.

The question which this court is asked to determine is whether such disease has come back to trouble the applicant or not?

To get the answer to the question I have posed, I have made effort to refer to the Medical Reports the latest being that of **Saifee Hospital dated 2/07/2019** attached in support of this application and I am satisfied that based on those reports the applicant had a history of Fistulectomy disease which was attended to.

However, what the applicant is alleging now is that the said disease has come back to trouble him but as stated by the respondent no recent medical report has been attached to move this court to consider the current health situation of the applicant. As much as I take notice to the cited High Court of **Abuu Bakar Mohamed Omar v. DPP, Criminal Application No 115 of 2022, High Court Zanzibar**, where the applicant was granted bail in non- bailable offence, but I am also alive to the principle that each case or application is to be decided on its own merits and not otherwise, in that case, at page 3 of the Ruling Hon. A.I.S.SUWEDI, J had this to say:

'The applicant contended that he is seriously sick and attached recent medical prescriptions and Pathology Laboratory Report from Mnazi Mmoja Hospital of which illness has been taken as one of the ground in granting bail in non- bailable offence'

The merits of two applications are not the same, in the above cited case the applicant was seriously sick and needed attention which was not possible to receive in Offender's Education Center (Chuo cha Mafunzo) where he was held in custody, furthermore, the applicant had attached recent medical prescriptions to support his application, while in present and current application in hand, the applicant is asking this court to use its discretionary powers to grant bail based on the medical reports dated 2/07/2019 and no other recently medical report or prescription is attached to show at least the applicant has received a medical attention while in custody with respect to his Fistulectomy disease as contended.

Without such recent medical report to support this application, it is very difficult for this court to determine the current status of the applicant health condition so that it can use its inherent powers and admit the applicant to bail.

That being said, this court agrees with the respondent that, the applicant has failed to persuade this court with sufficient grounds which show that, the Fistulectomy disease has come back to trouble the applicant so as to move this court to invoke its inherent powers and grant him bail in a non - bailable offences.

Consequently, this application lack sufficient reasons and is devoid of merits and it is hereby dismissed.

Ordered Accordingly.

S. HASSAN (J)

Dated: 18th October, 2023

I CERTIFY TO TRUE COPY OF THE ORIGINAL

**REGISTRAR
HIGH COURT- ZANZIBAR.**

