

**IN THE HIGH COURT OF ZANZIBAR**  
**HOLDEN AT VUGA**  
**CRIMINAL CASE NO. 56 OF 2023**  
**BETWEEN**  
**DIRECTOR OF PUBLIC PROSECUTIONS**  
**V.**  
**LUKMAN MOHAMED BACHU..... ACUSED**

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**RULING**

**Dated: 20<sup>th</sup> March, 2024**

**S. HASSAN (J)**

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

In this case, the accused is represented by Advocates Daud Kidiara, Mr Rajab Abdallah and Mr. Abdalla Juma, while the DPP is represented by the SSA Shamsi Saad.

Today the 20<sup>th</sup> March, 2024 the matter was called for Preliminary Hearing in accordance with **section 172 (1)** of the Criminal Procedure Act No. 7 of 2018.

It was the submission from Mr. Shamsi that the Preliminary Hearing be postponed because the investigation is on going hence prayed for adjournment and the matter to be fixed for Preliminary Hearing on another date.

On the other side Mr. Abdalla Juma for the accused objected the prayer from the Prosecutions and submitted that the accused was arraigned since **29/8/2023** and the Prosecutions had 6 month to conduct and conclude their investigation as per section **152 (1) (2) of the Criminal Procedure Act No. 7 of 2018**. He further submitted that failure of Prosecution to conclude the investigation on time is to pro long this matter un necessarily while the accused in under custody, hence he pray the accused to be admitted to bail in accordance with the law.

On the other hand, Mr. Shamsi opposed the prayer for bail and stated that, under **section 152** of CPA it is not mandatory for the court to grant bail, the section also provides for the discretion of the court to either grant the bail or to refuse. He went on to state that, the accused is facing a serious and complex offences concerning money transactions and many people were affected hence he opposed the accused being granted bail.

In his brief rejoinder on the issue, Mr. Abdalla Juma submitted that, section 152 of CPA is a mandatory provision and the discretion is on the court to determine whether to grant bail or not after the hearing has not commenced within given 6 months.

Having heard the submission from both parties, it is time to digest the matter and provide our ruling on whether to grant bail or not.

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, I find it appropriate and wisely to produce the text of **section 152 (1) (2)** which is a subject matter of this ruling. The section provides as follows:

*“ 152 (1) **The hearing of a case in which a person is charged with non-bailable offence must commence within six months from the date when a person so charged was arrested**”.*

*(2) **‘if the hearing does not commence within the said period of six months, the accused shall be admitted to bail unless the Court for the reasons to be recorded in writing, direct otherwise’.***

From the reading of subsection (1) and (2) above, my understanding is that, under subsection (1) the law has put mandatory for the non bailable offence case to commence within 6 months from the date when the a person charged is arrested by using the words **“must”**.

While under subsection (2) the law has provided 2 conditions for the court to grant bail, condition one is automatic and mandatory without the court advancing any reason, that is the first part of subsection (2), ***“if the hearing does not commence within the said period of six months, the accused shall be admitted to bail”*** as submitted by Mr Abdallah Juma, while the second condition is discretionary left to the court to decide if bail is denied by advancing written reasons for such denial and that is the second part of subsection (2) as submitted by Mr Shamsi ***“ unless the Court for the reasons to be recorded in writing, direct otherwise”***

The understanding of this court is that, the second part of subsection (2) is drafted in such a way to give discretionary powers to the court to deny bail based on the gravity of the offence as the court may, by reasons determine, even if six months has lapsed and the hearing of the case has not commence. Therefore the Court will be legally correct if opted to grant bail by using first condition and also the court will be legally right and correct to refuse bail by using second condition.

In determine this matter, I shall make reference to the case of **Patel v. R (1971) H.C.D n. 391** when the court provided that 4 main principles of grating bail pending the trial as herein:

- 1. The first and foremost is that the court should ask itself whether the accused would be available at the trial.*
- 2. Another principle which the court should consider is whether the accused is likely to commit further offence if he is allowed out on bail in which case his character is certainly not irrelevant.*
- 3. A further principle is whether the accused is likely to interfere with the investigation by influencing witnesses or otherwise*
- 4. Finally the gravity of the accusation*

Furthermore, in relation to the discretion of the court in granting or refusing bail, the matter of discretion was discussed in the case of **Padfield v. Minister of Agriculture, Fisheries and Food (1968) AC 977 at 103**, where Lord Reid observed the following:

***“ It is important to bear in mind that when a statute confers the exercise of discretion, the intention of the law must be that the discretion must be exercised to promote the policy and object of the statute. The policy and object of the statute must be determined by construing the statute as a whole and the construction is always a matter of the law for the court”***

Having look at the 4 principle provided by the court in the above mention case authority, with respect to 1<sup>st</sup> principle, the prosecution has not shown that the accused will not be available to attend his trial if bail is granted, hence it is the view of this court that the accused will not abscond the trial when the matter is called on for hearing. Furthermore, with respect to 2<sup>nd</sup> principle, it was not submitted by the prosecution that the accused is likely to commit another offence if granted bail. With regard to 3<sup>rd</sup> principle the Prosecution had submitted that the case involve many people, but did not give further details on how the accused is likely to interfere with the investigation by influencing witnesses or otherwise. With respect to the 4<sup>th</sup> principle, it was indeed submitted by the Prosecution that, the accused is facing a serious and complex offence, but it is the duty of prosecution to insure that they conduct a scientific investigation within the scope of time provided by the law which is **6 months** from the date the accused is arrested and not to pro long this matter for un justifiable excuses.

This court having referred to its own records it has realized that, 7 months has lapsed and there is no indication that the investigation has even commenced, hence it will be injustice for this court to deny the accused bail. I should have granted bail without giving any reasons because **section 152 (2)** allows the court to give bail without advancing any reasons, but for the purpose of records I find it wisely to give reasons for granting bail to the accused person.

Having said that, this court grant bail to the accused person **Lukman Mohamed Bachu** in accordance with **section 152 (2) of the Criminal Procedure Act No. 7 of 2018** for failure of Prosecution to commence hearing of this **Criminal Case No. 56 of 2023** within the time of **6 months** as provided by **subsection (1) of section 152 of the Criminal Procedure Act No. 7 of 2018**.

The accused shall fulfill the following bail conditions:

- 1. 2 sureties with permanent resident and valid Zanzibar ID or Tanzania ID**
- 2. Each surety to sign a bond of 15 Million Tanzania Shilling**

**3. The accused to sign a bond of 15 Million Tanzania Shillings**

**Ordered Accordingly.**

A handwritten signature in blue ink, appearing to be 'S. Hassan (J)', written over a horizontal line.

**S. HASSAN (J)**

**Dated: 20<sup>th</sup> March, 2024**