IN THE HIGH COURT ZANZIBAR
HOLDEN AT VUGA
CRIMINAL APPLICATION NO.02/2007
FROM CRIMINAL CASE NO. 20/2006

SALUM ABDALLA SALUM & 7 OTHERS …APPLICANTS

VERSUS

DIRECTOR OF PUBLIC PROCESECUTION …RESPONDENT

……..……..

Mwampashi-J

The applicants in this application namely Mr. Salum Abdalla Salum, Hassan Abdalla Masoud, Kombo Khamis Kombo, Khamis Ali Abdalla, Bimkubwa Said Bakari, Faki Ali Hassan, Miraji Mohamed Rashid and Abdull-kadir Mohamed Said stand charged with murder c/ss 196 and 197 of the Penal Act No. 6 of 2004 in the High Court criminal case No 20/2006. The charge against them was preferred in court on18/09/2006 and to date the hearing of their case has not yet been commenced.

Because of the nature of the charge the applicants face they have been restrained in custody since then and they have therefore through Mr. Hamid Mbwezeleni and Mr. Abdalla Juma Mohamed, learned counsels, now filed this application asking the court to invoke S. 151 (1) of the Criminal Procedure Act No. 7 of 2004 and admit them to bail. The application is supported by the affidavit deponed by Mr. Abdalla Juma Mohamed learned counsel.

In this application the respondent DPP has been represented by Ms. Fatma Hassan and Ms. Raya Issa Mselem, learned State Attorneys.

S. 151(1) of the Criminal Procedure Act No. 7/2004 under which this application is based provides as follows:-

'The hearing of case (sic) in which a person is charged with non-bailable offence must commence within nine months from the date when a person so charged was arrested. If the hearing does not commence

within the said period of nine months, the accused person shall be admitted to bail unless the Court, for reasons to be recorded in writing direct otherwise'.

It has been submitted by the learned counsels for the applicants, Mr. Mbwezeleni and Mr. Abdalla Juma, that since the Prosecution side has failed to commence the hearing of the case the applicants face within the prescribed period of nine months then the court should invoke the mandatory provisions of S. 151(1) of the Criminal Procedure Act and admit the applicants to bail. The counsels for the applicants have further insisted that bail is the applicants' basic right that can not be simply denied without any good reason. Denying bail to the applicants will not only be contrary to the clear provisions under S. 151(1) but will also be a clear violation of the Constitution of Zanzibar which provide for equality before the law and for accused persons to be presumed innocent, the learned counsels have emphasized. It has also been argued by them that the applicants are in fact now being illegally restrained in custody.

Ms. Fatma and Ms. Raya the learned State Attorneys for the respondent have asked the court to dismiss the applicants' application because the applicants are charged with a very serious offence and that the case the applicants face has public interests. It has also been lastly submitted for the respondent that investigations in regard to the main case are now complete and therefore that the hearing can be commenced at any time.

It is not disputable that the charge of murder with which the applicants are charged is one of the non-bailable offences referred to under S. 151(1) quoted above. It is also clear from the record and it is not disputed by the respondent that the hearing of the main case was not commenced within the prescribed period of nine months and that the same is still pending before this court because the prosecution is not yet to provide record of evidence to the applicants or their advocates as it is provided under S. 225(1) of the Criminal Procedure Act No. 7/2004.

It should also be put clear at this very point that under S.151(1) of the Criminal Procedure Act No. 7/2004 it is not the question of the investigations being completed as it is argued by the respondents but it is the question of the Prosecution side being ready to commence the hearing. That is exactly what is provided under the first part of S. 151(1) that:-

'The hearing of case (sic) in which a person is charged with non-bailable offence must commence within nine months from the date when a person so charged was arrested.'

The respondent's objection to this application at hand appears to be in regard to what is provided in the last part of the second part of the same S. 151(1) that:-

'If the hearing does not commence within the said period of nine months, the accused person shall be admitted to bail unless the court, for reasons to be recorded in writing direct otherwise'. (my own underlining).

The respondents' argument is that although the hearing of the case has not been commenced within the prescribed period of nine months and that although according to S. 151(1) the applicants are entitled to be admitted to bail still the court should not admit them to bail because the offence of murder is very serious and that the case has public interest.

This court, first of all, before embarking on considering whether the above stated respondents' arguments for denying bail to the applicants are tenable or not, is of a view that a proper construction of S. 151(1) should be to the effect that if the Prosecution desires that the law as provided under that section should not be applied in the accused person's favor then it should be upon it to give good reasons convincing the court that the accused is not to be admitted to bail. It should be so because under normal circumstances and where hearing has not been commenced the court knows nothing about the substance of the case and the accused person's antecedents apart from brief particulars laid in the information or charge sheet. All what the court knows at that stage is that the accused person appearing before it is innocent and that s/he is entitled to be admitted to bail as her/his basic right. It therefore becomes clear that it is the Prosecution which is in good position to know and it has a duty to inform the court of any relevant fact or ground that can be considered by the court when deciding whether the caused be admitted to bail or not. The court is in no good position without being assisted by the Prosecution, to know what are acceptable reasons in that particular case that can be given to justify denial of bail to the accused person. If there are any good reasons for denying bail to an accused person who is entitled to it under S. 151(1) of the Criminal Procedure Act No. 7/2004 then those reasons should be given by the Prosecution. That is what S. 151(1) should be construed to mean.

Coming to the issue at hand on whether there are any good reasons for denying bail to the applicants in this application as it is provided under S. 151(1) this court finds that the reasons that the offence of murder is serious and that it is of public interest as argued by the respondents, to be very flimsy. Firstly, as it has correctly been argued by the applicants' counsels, the issue of the seriousness of the offence of murder and any other non-bailable offences, has already been considered by the law makers when passing S.151(1) and for that case the argument that bail be denied to the applicants because they face a serious offence of murder makes no sense. In other words S.151(1) has made all capital offences of which the law used to prohibit grant of bail now bailable provided the hearing of cases in regard to the said offences is not commenced within nine months from the date accused persons facing such offences were arrested.

It should also be appreciated that the passing of S.151 of the Criminal Procedure Act No. 7/2004 by the Legislature did not come from the blue. Many of us should be aware of the fact that the legal position before S. 151 came into place was that the laws governing criminal justice did not clearly prescribe for time within which hearing of the so called non- bailable offences would be commenced. This lacuna led to undesirable delays in such cases and as a result accused persons who found themselves charged with this type of offences ended up languishing in remand prisons for ages just because investigations of their cases were said not to be complete. The worst part of it was that in some of these cases even when investigations were later said to be complete charges against them were dropped for lack of enough evidence to support the charges leaving the released accused persons with no simple course for compensation for being unjustifiably remanded in custody for years. This provision of law therefore came as a savior to rescue such innocent sufferers and cure the mischief and it should therefore be commended. The court should construe this provision in such a way as to suppress the mischief and advance the intended remedy. Remanding an accused person in custody for ages without any good reason when charges against her/him have not been proved involves the curtailment of her/his personal liberty and in such circumstances bail should not therefore be refused lightly.

S. 151 therefore came into force for a very important purpose namely to ensure that accused persons' liberty is not unreasonably curtailed even where the offence concerned is serious and non-bailable and most importantly to ensure that justice is timely done for justice delayed is justice denied. The Legislature in inserting that provision into

our existing laws did not intend for the same to just decorate the law, it was put there for purpose and that it should be applied. It is high time for authorities involved in crime investigations and prosecution and all those involved in criminal justice in general to be aware of that important provision and to know that days of keeping accused persons in remand and gathering evidence at a snail speed as it all the time under the sun is theirs are long gone. The court will always dispense justice fearlessly and according to law for that is its core constitutional duty.

It has also been the respondents' argument that the applicants should be denied bail because the case the applicant face has public interests. Unfortunately enough this court has not been told by the respondents what particular interests the public has in this case. It is not enough to just generally allege that the applicants be denied bail for public interests without telling the court what public interests are at stake in regard to the case the applicants face. Such arguments should be backed by solid and satisfactory grounds. This court is not ready to deny bail to the applicants relying on such vague fears and suspiciousness on the part of the respondent. After all it is a considered view of this court that public interests demand that justice should be fairly and timely done and that individuals' liberty is not curtailed without good reasons. This, I think, is the public interest which was in the minds of the members of the Legislature when passing S.151 of the Criminal Procedure Act No. 7/2004.

For the given observations and reasons this court hold that the applicants are entitled to be admitted to bail under S. 151(1) of the Criminal Procedure Act No. 7/2004 as their right because the Prosecution has failed to commence the hearing of their case within the prescribed period of nine months from the date they were arrested.

After so holding above the only question remaining and which is a difficulty one is what conditions are to be attached to that bail. This court appreciates the fact that the charge of murder is a very serious offence and that it attracts the most severe sentence in our existing laws which is no other than the death penalty. It goes without saying therefore that an accused person facing such an offence and who is released on bail is very likely to be tempted to abscond and therefore defeat the ends of justice. Since the interests of justice requires that an accused person released on bail should be able to appear in court when s/he is so required for her/his trial then in deciding which bail conditions should be set in regard to the applicants in this application, this court is to be guarded by that paramount requirement i.e that conditions set must be those which will

ensure that no applicant absconds and that all of them will be available to face their trial. Surely bail conditions in cases like the case the applicants face can never be inadequate but the court should also put into consideration the fact that granting bail on too hard conditions which can not be met is equal to not granting bail at all.

Considering the seriousness of the offence the applicants stand charged with together with other relevant factors as observed above bail is therefore granted to the applicants on the following conditions:-

1. Tshs 5,000,000. cash be deposited to the court by each applicant or by any other person on the applicant's behalf.
   OR
   In the alternative, each applicant or any other person on her/his behalf should deposit in court as security an immovable property situated in Zanzibar Municipality valued at not less than Tshs 30,000,000. This should be done by producing and depositing to the court an authenticated document of title (title deed) to the property so deposited as security.

2. Three reliable and well identified sureties to sign a bond of Tshs.10,000,000. each for each applicant. The sureties must be approved by this court.

3. Any applicant holding a passport or any other traveling documents should deposit the same to the court.

4. No applicant will be allowed to travel outside this island i.e Unguja without a permission being firstly sought and given by this court.

5. Applicants who meet the above conditions should report to this court on every Tuesdays and Fridays at 8.30 am. The court clerk to prepare and maintain an attendance/reporting register for that purpose.

It is so ordered.

Sgd. Abraham Mwampashi.
J.

10/10/2007

Delivered in court this 10th day of October 2007 in the presence of the applicants with their advocates Mr. Mbwezeleni and Abdalla Juma and in the presence of Mr Muumini Khamis Kombo and Suleiman Makame (SA) for the respondent DPP.

Sgd. Abraham Mwampashi. J
10/10/2007