



**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY OF TANZANIA**



BAIL GUIDELINES

SEPTEMBER, 2020

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PREFACE

The core function of the Judiciary of Tanzania is to administer justice in both criminal and civil cases. Adjudication of criminal cases involves various procedural aspects, one of which being determination of bail pending trial or appeal. This procedure takes into account the accused's right to presumption of innocence and right to personal freedom enshrined in the Constitution of the United Republic of Tanzania, 1977. These constitutional guarantees must be realized in a manner that ensures certainty, predictability and uniformity. These Guidelines have been developed to address practical challenges experienced by the courts in handling bail matters.

It is expected that these Guidelines will be of assistance to the courts and facilitate their work in achieving the above objectives. For reference purposes, a few cases have been cited in these Guidelines. In that regard, all judicial officers are urged to make use of this user-friendly tool in handling bail matters.

Dar es Salaam

Date: 10th September, 2020



.....
PROF. IBRAHIM HAMIS JUMA

Chief Justice

STATUTES

1. The Appellate Jurisdiction Act [Cap. 141 R.E. 2019]
2. The Constitution of the United Republic of Tanzania 1977 [Cap. 2 R.E. 2002]
3. The Criminal Procedure Act [Cap. 20 R.E. 2019].
4. The Drugs Control and Enforcement Act [Cap. 95 R.E. 2019].
5. The Economic and Organized Crime Control Act [Cap. 200 R.E. 2019].
6. The Magistrate Courts Act [Cap. 11 R.E. 2019].
7. The National Security Act [Cap. 47 R.E. 2002].
8. The Wildlife Conservation Act [Cap. 283 of 2010].

RULES

1. The Criminal Procedure (Approved Forms) Notice, 2017 [GN. No. 429/2017]
2. The Primary Court Criminal Procedure Code, Third Schedule to the MCA

TABLE OF CASES

1. Amiri Mohamed v. Republic, Criminal Appeal No. 170 of 2004, HC- Dar es Salaam District Registry (unreported).
2. Attilio s/o Mosca v. Republic [1968] H.C.D n. 295.
3. Attorney General v. Jeremia Mtobesya, Civil appeal No 65 of 2016, CAT (unreported).
4. Director of Public Prosecutions v. Ally Nur-Dirib & Another [1988] T.L.R 252.
5. Hamisi Masisi & 6 Others v. Republic [1985] T.L.R 29.
6. Hassanali Walji v. Republic [1968] H.C.D n. 174.
7. In Re-Republic v. Georges Tumpes [1968] H.C.D n. 416.
8. Michael v. Republic [1972] H.C.D n. 56.
9. Mipawa v. Republic [1971] H.C.D n. 62.
10. Raghbir Singh Lamba v. Republic [1958] EA 337.
11. Republic v. Nicholas Alfred Kiyabo [1987] T.L.R 39.
12. Republic v. Omary Kibwana [1986] T.L.R 16.
13. Singh v. Republic [1971] H.C.D n.149.
14. Sylvester Hillu Dawi & Another v. Director Public Prosecutions, Criminal Appeal No. 250 of 2006, CAT (unreported); and
15. The Director of Public Prosecutions v. Li Ling Ling, Criminal Appeal No. 508 of 2015, CAT (unreported).

ABBREVIATIONS

AJA	The Appellate Jurisdiction Act.
AMLA	The Anti-Money Laundering Act.
CPA	The Criminal Procedure Act.
DCEA	The Drugs Control and Enforcement Act.
E.A.	East African Law Reports.
EOCCA	The Economic and Organized Crimes Control Act.
HC	The High Court of Tanzania.
HCD	High Court Digest.
LCA	The Law of the Child Act.
MCA	The Magistrates' Courts Act.
NSA	The National Security Act.
PCCPC	The Primary Court Criminal Procedure Code.
T.L.R.	Tanzania Law Reports.
WCA	The Wildlife Conservation Act.

DEFINITION OF TERMS

“bail”	means a temporary release of an accused person awaiting trial or appeal on conditions stipulated by the court to guarantee his appearance in court.
“bail hearing”	a proceeding in which the court determines whether an accused person should be released on bail or held in custody pending trial or appeal.
“bond”	an undertaking by an accused person or his surety which binds him to comply with bail conditions.
“constitution”	the Constitution of the United Republic of Tanzania, 1977 as amended from time to time.
“court”	means the High Court and subordinate courts thereto and includes the Juvenile Court.
“personal” “recognizance”	a bond by which an accused person undertakes before the court to observe conditions to appear in court when required.
“police bail”	temporary release of a suspect of a crime pending investigation or arraignment by the police or any other investigative agency to guarantee his appearance when needed.
“security”	means properties deposited or pledged to guarantee appearance of an accused person in court and includes money and certificate of title.
“surety”	a person who undertakes to ensure that an accused person will appear in court and abide by bail conditions.

CHAPTER ONE

1. INTRODUCTION, OBJECTIVES AND RATIONALE FOR DEVELOPING BAIL GUIDELINES

1.1. Introduction

These Guidelines have been developed for use by judges and magistrates in criminal proceedings in handling bail matters with a view to realizing the accused person's right and freedom of liberty guaranteed under the Constitution. The need for developing the Guidelines has been a result of many practical challenges experienced by courts in handling of bail matters. The Guidelines are not intended to be a substitute for the relevant statutory provisions regulating the grant of bail. They are only meant to guide the courts in the course of handling bail matters in order to achieve certainty and uniformity.

This document is divided into five chapters. Each of the chapters deals with a specific topic. Chapter one provides an introduction. Chapter two deals with the concept of bail. Factors to be considered in bail applications are covered in chapter three. Chapter four is dedicated to variation of bail conditions, cancellation of bail and issues pertaining to appeals from denial of bail. Finally, chapter five covers the discharge of sureties and disposal of securities.

1.2. Objectives and Rationale for Developing Bail Guidelines

The main objective of these Guidelines is to provide a quick reference to the law and practice governing the process of bail determination before and during trial and pending determination of appeals. Specifically, they aim to:

- (a) ensure that determination of bail strikes a balance between the rights of the accused, the victim and the public interest.
- (b) promote transparency, uniformity and predictability in determining bail applications and thereby enhancing public confidence in the administration of criminal justice.
- (c) address and reduce congestions in remand prisons.

CHAPTER TWO

2. THE CONCEPT OF BAIL

Article 13(6)(b) of the Constitution provides that no person charged with a criminal offence shall be treated as guilty of the offence until proven otherwise by a court of competent jurisdiction. In giving effect to this constitutional principle, Parliament has enacted various pieces of legislation to address the issue. These pieces of legislation include the Criminal Procedure Act [Cap. 20 R.E. 2019] (the CPA), the Economic and Organised Crimes Control Act [Cap. 200 R.E. 2019] (the EOCCA), the Appellate Jurisdiction Act [Cap. 141 R.E. 2019] (the AJA), the Magistrates' Courts Act [Cap. 11 R.E. 2019] (the MCA) and the Primary Court Criminal Procedure Code, Third Schedule to the MCA. In particular, section 148 of the CPA and section 36 of the EOCCA regulate the grant of bail to an accused person in criminal proceedings conducted in the District Courts, the Court of

Resident Magistrate and the High Court. On the other hand, sections 24(a) (i) of the MCA, section 368 of the CPA and section 10 of the AJA regulate the grant of bail pending appeal. In addition, the Chief Justice promulgated rule 11(2) (b) of the Tanzania Court of Appeal Rules,¹ empowering the Court of Appeal to grant bail to appellants pending determination of their appeals. In primary courts, section 16 of the PCCPC lays down the procedure for bail at that level. The above cited legal provisions are supplemented by case law.

2.1. Types of Bail

There are two types of bail; police bail and court bail.

2.1.1. Police Bail.

When a suspect is arrested or held under restraint by the police or any other investigative agency, he may be granted bail pending investigation and institution of a charge before a court of law in accordance with section 64 of the CPA or section 16 of the PCCPC.

1 GN. No. 368 of 2009. The 2019 version of the Tanzania Court of Appeal Rules has incorporated amendments effected through GN. No. 362 of 2017 and GN. No. 344 of 2019.

2.1.2. Court Bail.

Court bail may be granted during trial or pending appeal. Once a charge has been instituted, the court has powers to grant bail- except where the law provides otherwise. The court has a duty to inform an accused person of his right to bail immediately after his plea has been taken. These Guidelines are specifically intended to address court bail.

2.2. Principles of Bail

Bail consideration is guided by two main principles; namely, presumption of innocence and right to liberty as guaranteed by the Constitution, statutes and case law.

2.3. Stages of Granting Bail

Courts may consider and grant bail at any of the following stages of the case:

2.3.1. During Holding Charge.

Upon the accused person being brought to court on a holding charge, he may be granted bail.²

2.3.2. Pending Committal Proceedings

When a person is charged of a bailable offence triable by the High Court only he may be admitted to bail by

² Section 122 of the Criminal Procedure Act [Cap. 20 R.E. 2019].

the committing court.³ In cases under the EOCCA grant of bail at this stage is subject to the monetary value involved in the charge.⁴

2.5.3. Pending Trial

A person charged with aailable offence may be granted bail at any stage of the trial upon fulfilment of conditions set by the court. However, it is imperative that an accused person be considered for bail on the first day the charge is read over to him.

2.5.4. Pending Appeal

Bail can be granted pending determination of an appeal. For appeals originating from subordinate courts, the appellant may be admitted to bail by the High Court or a subordinate court which convicted him.⁵

In appeals from the High Court to the Court of Appeal, the appellant may be admitted to bail by the High Court or Court of Appeal.⁶

3 Republic. v. Dodoli Kapufi & Patson Tusalile, Criminal Revision No. 1 of 2008, CAT (unreported) and Director of Public Prosecutions v. Bashiri Waziri & Mugesu Antony, Criminal Appeal No. 148 of 2012 CAT (unreported).

4 Director of Public Prosecutions v. Aneth John Makame, Criminal Appeal No. 127 of 2018, CAT (unreported).

5 Section 24(1) (a) (i) of the MCA and section 368(1) (a) (i) of the Criminal Procedure Act [Cap. 20 R.E. 2019].

6 Section 10 of the AJA and Rule 11(2) the Tanzania Court of Appeal Rules.

CHAPTER THREE

3. BAIL CONSIDERATION AND DETERMINATION

3.1. Bail Procedures

Once a charge has been instituted and the accused person is arraigned before the court for the first time, the court shall:

- (a) if the offence is bailable, inform the accused person his right to bail, set conditions and consider admitting him to bail.
- (b) (i) if the prosecution raises any objection on a point of law, allow the parties to make submissions; or
- (ii) if the objection is on both facts and point of law, allow the parties to file affidavit and counter affidavit stating facts supporting and opposing the objection and thereafter hear the parties for and against the objection, and immediately make a ruling on the objection. In case the objection is overruled, grant bail

- and set down conditions thereof immediately.
- (c) where the court is satisfied that the accused person cannot be admitted to bail either according to law or other sufficient reasons, it shall record such reasons and inform him his right to appeal. The court shall proceed to remand the accused person in custody.

3.2. Factors to Consider Before Granting Bail

In determining bail applications, the court shall observe the provisions of section 148 (5) (a) to (e) of the CPA, section 36(4) of the EOCCA or section 16 of the PCCPC, as the case may be.

In addition to the conditions prescribed under the provisions above named, the court shall take into account the following factors:

- (a) gravity of the offence and severity of the sentence;
- (b) security of the accused person;
- (c) protection of the victim;
- (d) possibility that the accused might abscond;
- (e) prevention of furtherance of crime;
- (f) preservation of public order;

- (g) nationality of the accused;⁷
- (h) the nature of the accused person in terms of his social standing, ties with the community, etc.;
- (i) special circumstances of the accused e.g. illness or vulnerability;
- (j) period during which the accused may be in remand;
- (k) possibility of the accused interfering with the investigation process; and
- (l) age of the accused (minor or old age).

Provided that where the accused person is a child, the court shall admit him to bail and release him into the care of his parent, guardian, a fit person, approved institution or the Commissioner for Social Welfare or his representative, with condition to make him available to the court on a date to be specified. ⁸

3.3. Conditions for Granting Bail

3.3.1. Mandatory Conditions

The court shall impose the following mandatory conditions as prescribed under section 148(6) (a) & (b) of the CPA, section 36 (5) of the EOCCA and section 16(3) of the PCCPC:

⁷ Edward D. Kambuga & Another v. Republic [1990] T.L.R. 84.

⁸ Rule 28 of the Law of the Child (Juvenile Court Procedure) Rules, 2016

- (a) surrender by the accused person to the police of his passport or any other travel document; or
- (b) restriction of the movement of the accused to the area of the town, village or other area of his residence.

In imposing conditions specified under paragraph (b), the court may restrict the movement of the accused person to the locality within the jurisdiction of the court.

3.3.2. Additional Conditions

In addition to the mandatory conditions, the court may, in some circumstances, impose additional conditions as prescribed under the provisions of section 148(7) of the CPA and section 36 (6) of the EOCCA as follows:

- (a) Requiring the accused to report at specified intervals to a police station or other authority within the area of his residence;
- (b) requiring the accused to abstain from visiting a particular locality or premises, or associating with specified persons; and
- (c) any other condition which the court may deem proper and just to impose in addition to the conditions in paragraphs (a) and (b).

In addition to the above statutory conditions, the court may take into account any of the following factors:

- i. setting reasonable amount for bail in accordance with the circumstances of the case;
- ii. need to have sureties;
- iii. gravity of the offence; and
- iv. public interest.

The court shall refrain from giving orders which may appear unreasonable and impracticable.⁹

3.4. Satisfying Conditions for Bail

Where the court grants bail, it shall proceed to-

- (a) scrutinize sureties, documents or securities presented to the court;
- (b) satisfy itself that the accused and sureties understand the conditions of bail;
- (c) serve the accused with a release order setting out the conditions of bail imposed¹⁰; and
- (d) make an order for releasing the accused person from custody after taking into account that all conditions stated in paragraph 3.3 of these Guidelines are met.

9 Hamisi Masisi & 6 Others v. Republic [1985] T.L.R. 24 and Republic v. Georges Tumpes [1968] H.C.D n. 416.

10 Criminal Form No. 10 [GN. No. 429/2017].

Where the accused person fails to satisfy the bail conditions, the court shall adjourn the case pending the accused meeting the conditions and shall inform the accused that upon meeting conditions, he shall be brought to court and be released on bail before or on the next date fixed by the court. All matters relating to bail must be recorded.

3.5. Conditions and Factors for the Grant of Bail Pending Appeal

The provisions of sections 368 of the CPA, 10 of the AJA and 24(1)(a)(i) of the MCA vest in courts powers to grant bail pending appeal if there is reasonable cause and on the tests set by case law, that is to say:

- (a) where there is an arguable point of law; or
- (b) existence of exceptional and unusual circumstances; and ¹¹
- (c) where there is evidence of contagious disease resulting to immediate death.

Other cases dealing with grant of bail pending appeal.¹²

11 *Ibid.* See also *Attilio s/o Mosca* (1968) H.C.D n. 295 and *Re-Republic v. Sakerbai M. A. Ganji* [1967] H.C.D n. 243.

12 *Republic. v. Nicholas Alfred Kiyabo* [1987] T.L.R. 39, *Amiri Mohamed v. Republic Criminal Appeal No. 170 of 2004 HC* (unreported), *Hassanali Walji v. Republic* [1968] H.C.D n. 174, *Raghibir Singh Lamba v. Republic* [1958] E.A. 337, *Attilio s/o Mosca v. Republic* [1968] H.C.D n. 295, *Mipawa v. Republic* [1971] H.C.D. n. 62, *Singh v. Republic* [1971] H.C.D. n. 149 and *Michael v. Republic* [1972] H.C.D. n. 56.

3.6. Modes of Granting Bail

3.6.1. Bail Without Sureties (Recognizance)

The accused person may be released on bail upon execution of a bond without sureties for his appearance in court. The amount of bond shall have regard to the gravity and other circumstances of the case, but shall not be excessive.¹³ In addition to the bond, the court shall require an introduction letter from a local authority or employer and any of the following documents:

- (a) National Identity Card;
- (b) Voter's Registration Card;
- (c) Driving Licence; or
- (d) Passport.

3.6.2. Bail with Sureties

Where the accused person is released on bail with sureties, he and the sureties shall sign a bond. The amount of bond shall not be excessive. The court shall have regard to the gravity of the offence and severity of the sentence in the event the accused would be convicted and other circumstances of the case. In addition, the court shall observe the following:

¹³ Section 148(1) and (2) of The Criminal Procedure Act [Cap. 20 R.E. 2019] and section 16 of The Primary Court Criminal Procedure Code.

- (a) unless there are compelling circumstances, the number of sureties shall not be more than two; and
- (b) it shall not be necessary for a surety to be a public servant.

The court shall require the surety to present an introduction letter from a local authority or employer and any of the following documents:

- (a) National Identity Card;
- (b) Voter's Registration Card;
- (c) Driving Licence; or
- (d) Passport.

If an objection on reliability of proposed surety is raised the same shall be promptly determined by the court.

3.6.3. Cash Bail

- (a) the court may order the accused person or his sureties to deposit cash as bail where the law requires doing so.¹⁴
- (b) where the law requires the accused to deposit half of the value or amount involved in the charge and there are more than one accused persons, that amount will be shared among them.¹⁵

14 Section 148(5) (e) of the Criminal Procedure Act [Cap. 20 R.E. 2019] and section 36(4) (e) of the Economic and Organized Crime Control Act [Cap. 200 R.E. 2019].

15 Section 148(5) (e) of The Criminal Procedure Act [Cap. 20 R.E.2019] and Sylvester Hillu Dawi & Another v. Director of Public Prosecutions, Criminal Appeal No. 250 of 2006 (unreported).

- (c) the bond amount shall be deposited in the deposit account of the judiciary and shall be returned to the sureties immediately after the case has been determined or upon discharge of sureties.
- (d) the court shall refrain from making an order for cash bail unless the law demands so.

3.6.4. Bail Bond

The Court may in certain circumstances order the accused or sureties to execute a bond to guarantee the accused's appearance in court. The amount of bond should be reasonable by considering the gravity of the offence and severity of the sentence.

3.6.5. Deposit of Property

- (a) the court may order the accused or any person on his behalf to deposit movable property or a document evidencing ownership of immovable property whose value corresponds to the amount of the bail.
- (b) if the deposit involves a matrimonial landed property, the document evidencing ownership shall be accompanied by spousal consent.

- (c) where there is any doubt as to the validity of the deposited property, the court may order verification of such document by any relevant authority.
- (d) the court shall record in a special register all properties deposited as security for bail. The register shall contain the following particulars:
 - i. case number;
 - ii. name of accused;
 - iii. date of release;
 - iv. name of the trial magistrate;
 - v. name of the depositor;
 - vi. name of receiving officer/ court clerk;
 - vii. type and description of deposited property;
 - viii. date the property was deposited;
 - ix. name of officer returning the security; and
 - x. name, signature and ID card of the person or depositor to whom the property is returned.

CHAPTER FOUR

4. VARIATION, CANCELLATION AND APPEAL

4.1. Variation of Bail Conditions

- (a) the court may, upon application by the prosecutor or police officer, cancel bail or vary the conditions where there is evidence of change of circumstances.¹⁶
- (b) before cancelling bail or varying bail conditions, the court shall accord the parties an opportunity to be heard.

4.2. Variation of Bail Conditions by the Higher Court

The High Court on its own motion or by application by either party or the district court in exercise of its revisional or appellate jurisdiction may reduce the amount of bail or vary any conditions set by the lower court.¹⁷ In the exercise of these powers, the court shall have regard to, among other things: -

16 Section 150 of the Criminal Procedure Act and the case of Sylvester Hillu Dawi & Another v. Director of Public Prosecutions, Criminal Appeal No. 250 of 2006 (unreported).

17 Section 149 of the CPA and the case of Sylvester Hillu Dawi & Another v. Director of Public Prosecutions, Criminal Appeal No. 250 of 2006 (unreported).

- (a) the nature and seriousness of the offence;
- (b) the character, antecedents, associations, home environment and the background of the accused;
- (c) the history of any previous grants of bail to the accused;
- (d) the strength of the evidence against the accused, if any; and
- (e) the attitude, if known, of the alleged victim of the offence to the proposed variation of the amount of bail or the conditions of bail.

4.3. Cancellation of Bail

The court may, on its own motion or upon being moved by a prosecutor or surety, cancel bail, where:-

- (a) there is a likelihood of breaching bail conditions
- (b) the accused employs delaying tactics;
- (c) there is failure to comply with bail conditions; and
- (d) an accused absconds.

Cancellation of bail under paragraph (a) to (c) shall not be effected unless the accused person has been accorded an opportunity to show cause why his bail should not be cancelled.

Where the accused absconds, the court shall issue a warrant for his arrest. Upon his arrest and being brought before the court, he will be required to show cause why his bail should not be cancelled for reason of non - appearance. If sufficient cause is not shown the bail shall be cancelled. In case the accused is not found after issuance of the warrant of arrest and the court is satisfied that he cannot be found, the case can proceed in his absence.¹⁸

4.4. Appeals and Revision from Orders Relating to Bail

- (a) a party who is aggrieved by any order issued by the court in bail proceedings, has a right to appeal to a higher court.
- (b) the higher court may on its own motion or upon an application by either party revise any order issued by the lower court in bail proceedings.
- (c) upon notification by an aggrieved party on his intention to appeal against the decision of the court on bail, the court shall immediately supply the parties with certified copies of decision and proceedings.

¹⁸ The court will then proceed to forfeit bail according to the procedure prescribed to under part 5.2.

CHAPTER FIVE

5. DISCHARGE OF SURETIES AND DISPOSAL OF SECURITIES

5.1. Discharge of Sureties

The court may discharge sureties under the following circumstances:

- (a) upon conclusion of the case or any order terminating the proceedings by withdrawal or dismissal of the case;
- (b) upon discharge of a surety following his application to that effect;¹⁹
- (c) upon abatement of the case; or
- (d) upon cancellation of bail.

5.2. Forfeiture

Section 160 of the CPA sets out procedures for forfeiture where an accused jumps bail as follows:

¹⁹ Section 155(1) of the Criminal Procedure Act [Cap. 20 R.E. 2019].

- (a) where the accused jumps bail, and the surety fails to procure him, the court shall summon the surety to appear before it within reasonable time, to show cause why his bond should not be forfeited and if he fails to show cause, the court shall determine the amount to be forfeited;²⁰
- (b) where the court orders forfeiture, it shall give the surety reasonable time to pay the amount determined and in case of default, the court shall issue warrant of attachment and sale of surety's movable property or his estate if he is dead;²¹
- (c) where a surety to a recognisance dies before the recognisance is forfeited, his estate shall be discharged from all liability in respect of the recognisance;²² and
- (d) if the penalty amount is not paid and cannot be recovered by attachment the surety shall be liable to six months imprisonment.²³

20 Section 160(1) of the Criminal Procedure Act [Cap. 20 R.E. 2019] and Republic v. Omary Kibwana [1986] T.L.R 16.

21 Section 160(2) of the Criminal Procedure Act [Cap. 20 R.E. 2019] and section 17 of the Primary Court Criminal Procedure Code, Third Schedule to the MCA.

22 Section 160(6) of the Criminal Procedure Act [Cap. 20 R.E. 2019] and Section 17(6) of the Primary Court Criminal Procedure Code, Third Schedule to the MCA.

23 Section 160 (4) & Section 17 (4) of the Primary Court Criminal Procedure Code, Third Schedule to the MCA.

IN THE COURT OF

AT

BAIL REGISTER FORM

S/N.	CASE NO.	NAMES OF PARTIES	NAMES OF SURETIES	IDENTIFICATION CARD No./INTRODUCTION LETTER	AMOUNT DEPOSITED (if cash bail) ERV No. (if cash bail)	TITLE/ CERTIFICATE No./ LICENCE/ MOTOR V/C Reg. CARD.	DATE OF DISCHARGE OF SURETIES	DATE OF RETURN/ RETURN OF SECURITIES	NAME OF JUDGE/ MAGISTRATE	NAME & SIGNATURE OF RMA/COURT CLERK

COMMENTS

.....

Date

DEPUTY REGISTRAR/MAGISTRATE IN-CHARGE

Date

OFFICE OF THE CHIEF COURT ADMINISTRATOR

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