

# Hamisi Masisi and Others v. Republic

**High Court (Mfalila J.):  
Criminal Cause No. 54 of 1978**

*Constitution Law- duty- discharge by courts- whether courts to succumb irrelevant pressures whether courts to defend people and Constitution*

Criminal Procedure - bail- review- bail may be reviewed on reasonable grounds- Criminal Procedure Code s. 127

*Criminal Procedure- powers of arrest- Regional Commissioners- whether have powers of arrest under Regional and Area Commissioners Acts (Amendment) Act*

The applicants applied for variation of terms of bail imposed by the District Court of Musoma that had already been varied. Their application was dismissed in that regard. The High Court however proceeded to revise the order of the learned Resident Magistrate at his request. His request was to review the appropriateness and legality of the order regarding cancellation of bail, and to discuss the constitutional problem as to whether it is appropriate for the executive (particularly a Regional Commissioner) to order detention of an accused person for an offence he same accused is charged with in court, and in disregard of the Court's order that the same accused is entitled to bail.

When the applicants appeared before the lower court on December 12, 1978, the learned Resident Magistrate released them on bail on various terms. Then two days later, the Senior State Attorney moved the Court to cancel the orders of bail it had made in respect of all the applicants. The Senior State Attorney informed the Court that he was acting on the instructions of the Director of Public Prosecutions. Apart from this, the Senior State Attorney had very little to add to what the prosecutor had told the Court two days earlier. At this stage, Counsel for the applicants informed the Court about the high handed behavior of the Regional Commissioner for Mara Region in ordering the arrest and detention of all the applicants on the same grounds and charges, as soon as they were out of court and had fulfilled their conditions for bail.

The learned Resident Magistrate realized that there was a “conflict of powers” and cancelled the bail because the Regional Commissioner would simply re-arrest the applicants rendering his order for bail impotent.

**Held:**

1. By its very nature, an order for bail should be a subject of variation or cancellation by the Court that made it under s. 127, of the Criminal Procedure Code, where grounds for cancellation are made out. In this instance, no case was made out for the Court to vary or rescind its earlier order.
2. Court should not make decisions on expediency but only in accordance with the law and in defence of the people, the Constitution and the practices of the Republic as by law established despite any irrelevant pressures.
3. A Regional Commissioner has no powers of arrest under s. 7(2) of the Regional and Area Commissioners Acts (Amendment) Act. For these reasons, the Resident Magistrate had no reasons in law and in fact to vary and cancel his order for bail he made on December 14, 1978.

**Order of December 16, 1978 set aside. All applicants admitted to bail upon their execution of bonds in sum of shs. 100,000/= each with two sureties in like sum.**

**Legislation considered:**

1. Constitution of the United Republic of Tanzania
2. Criminal Procedure Code s. 127
3. Regional and Area Commissioners Acts (Amendment) Act 1963 Cap 461

*Kinabo* for the Republic