

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF MWANZA  
AT MWANZA**

**MISC CRIMINAL APPLICATION NO. 06 OF 2021**

*(Arising from the decision of Criminal Case No. 133 of 2020 in the District  
Court of Kwaimba at Ngudu)*

**ANTHONY S/O LUTAMBI ..... APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**RULING**

*31/03/2021 & 22/04/2021*

**W. R. MASHAURI, J:**

This is an application for bail pending trial. It is made under section 149 and 392 A(i) & (ii) of the CPA Cap. 20 R.E. 2019.

The applicant Anthon Lutambi is represented by Mr. Innocent Michael learned advocate whereby the respondent/Republic is represented by miss Mariasyntha Senior State Attorney.

In his affidavit in support of this application, Mr. Innocent Michael learned counsel for the applicant has deponed that, the applicant Anthony Lutambi is facing a criminal charge in Criminal Case No. 133 of 2021 which

is still pending in the High Court Registry at Mwanza in which the applicant is charged with the offence of attempted murder c/s 211 of the penal code as indicated in the charged sheet annexed to the affidavit as annexure marked "1".

In his submission in support of his affidavit, Mr. Innocent Michael counsel for the applicant submitted that, this application for bail is filed in this court under section 149 and 392A (i) & (ii) of the CPA Cap 20 R.E. 2019.

That, the offence of attempted murder is currently bailable.

That, the preliminary inquiry in this case has been conducted by District court of Ngudu and the applicant has been committed to the High court for trial to date, the matter is waiting for hearing pending a criminal session to be fixed by the Deputy Registrar.

That, the applicant is not a fugitive of law as before the preliminary inquiry was conducted, he was released on bail by the District court of Ngudu at Kwimba but he did not jump bail. The applicant has reliable sureties and even if he is released on bail cannot interfere with the prosecutions investigation. Upon so submitted, Mr. Innocent Michael learned counsel for

the applicant prayed the court to grant the applicant's bail pending trial of his case by the High court.

On her part, Miss Mariasytha learned Senior State Attorney upon asked the court to adopt his counter-affidavit and noted the contents of paragraphs 1, 2, 3, 4, 6 and 7 of the applicant's sworn affidavit. She however disputed the contents of paragraph 5 and urged the applicant to prove adhesion (sic) that he was initially released on bail upon being arrested in connection with the case No. SUMV/IR/171/2021 at Ngudu police station and upon released on police bail at Ngudu Police station, the applicant escaped and went missing and he was difficultly re-arrested by the police. The learned Senior State Attorney therefore objected the applicant's bail and told the court that, the applicant's conduct of escaping after committing an offence is sufficient evidence to prove that, if he is released on bail in this case, he is likely to jump bail and went missing forever, she therefore prayed the court to deny the applicant's bail pending trial of his case.

The issue is whether if released on the applicant is released on bail is likely to abscond and went missing forever.

It is cardinal principal that, a defendant being tried for one crime cannot be presumed guilty because of evidence of other crime except where evidence is for the purpose of showing mitigation (*injuria rexcusant injurium*).

The offence of attempted murder is currently bailable even by the subordinate courts.

At law, where the offence of which the accused person is charged with is bailable, bail is a constitutional right of the accused person.

On the basis of the foregoing and all said and done, the applicant's bail application is granted on conditions to wit: -

1. He shall execute bond in the tune of Shs. 1,000,000/= with two sureties in each the like sum.
2. Each surety shall produce in court an introductory letter affixed on his picture from their respective village leaders.
3. The applicant is refrained from travelling outside the local limit of Ngudu District court unless and until by leave of the trial magistrate.

4. He is also urged to report to the office of the OC-CID once a week all the time pending and dispose of his case. Sureties to be approved by the trial magistrate.

It is so ordered.



  
**W. R. MASHAURI**

**JUDGE**

**22/04/2021**

Date: 22/04/2021

Coram: Hon. W. R. Mashauri, J

Applicant: Present

Respondent: Ms. Mariasyntha, Senior State Attorney

B/c: Elizabeth Kayamba

**Court:** Ruling delivered in court in presence of the Senior State Attorney and Mr. Innocent Ndanga counsel for the applicant this 22/04/2021.



  
**W. R. MASHAURI**

**JUDGE**

**22/04/2021**