

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DISTRICT REGISTRY**

**AT TABORA**

**MISC. CRIMINAL APPLICATION NO.16 OF 2022**

*(Originating from Nzega Criminal Case No.39/2021)*

**HAMIS BAKARI SURU.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

*Date: 12/9/2022 &16/9/2022*

**BAHATI SALEMA,J.:**

This ruling is in respect of the application which was made under a certificate of urgency. The applicant herein **Hamis Bakari Suru** is detained in prison regardless the fact that he has already paid the fine in alternative of the imprisonment.

The application was made under section 372 of the Criminal Procedure Act, Cap.20 [R.E 2022] and other enabling provisions of the law and was supported by the sworn affidavit of Mr. Edward Malando, learned counsel. The applicant is praying for the following order that;

- i. *This honourable court be pleased to call for and examine the records of the trial District court of Nzega in Criminal Case no 39/2021 for it to satisfy itself as to the correctness, legality or propriety of the sentence against the committal order in the warrant issued by the trial court,*
- ii. *Any other order(s) the honourable court deems proper to grant in the circumstances of the application.*

The respondent did not file counter affidavit.

When the matter was called for hearing, the applicant was represented by Mr. Edward Malando whereas the Republic was represented by Mr. Joseph Makene and Tunosye Luketa, learned State Attorneys.

Submitting in respect of the applicant, the applicant prayed this court to adopt his affidavit to form part of his submission and summarized as follows; that the applicant was convicted by the trial court at Nzega District Court of stealing by agent contrary to section 273(2) of the Penal Code, Cap. 16 [R.E 2022] and following his conviction he was sentenced to pay a fine of TZS 500,000/=, or imprisonment for a term of one year in default. Meanwhile, the accused is to compensate the victim TZS 16,500,000/= being the actual value of 300 bags of maize the subject of Criminal Case No. 39 of 2021. At that time the applicant had

no such money for a fine and was committed to prison; vide warrant of committal issued to the officer in charge of Nzega prison.

However the Warrant of Committal issued by the trial court was written in a manner contrary to what was exactly the sentence in the judgment to read that, the applicant was committed *to serve a one-year imprisonment term or to pay fine of TZS 500,000/= and to pay compensation of TZS 16,500,000/=*.

Being the situation, when the applicant paid TZs 500,000,000/= as a fine on 27 June, 2022, the prison officer in charge refused to set him free on the reason that what was written in the warrant of committal is interpreted to mean that, the applicant is to serve a one-year jail term of cumulatively pay the TZS 500,000/= and TZS 16, 500,000/= a thing which was not written in the judgment of the trial court.

He submitted that the confusion above has resulted in the detainment of the applicant while he had paid the fine in alternative to the one-year jail term for a period of three weeks now. He prayed to the court to revisit the judgment at page 27 and the Warrant Order to interpret for the interest of justice and the applicant be set free.

Responding, Mr. Makene supported the application and further stated that, Article 13 of the Constitution of the United Republic of Tanzania provides for equality before the law. He submitted that since

there is a contradiction between the Judgement and the Warrant order in execution, he supported this matter to be revised in order to satisfy its correctness.

Having heard both parties, the issue before me is whether the application has merit.

Before jumping into the core part of this application, I find it important to quote the extract from the judgement that;

*"The accused is sentenced to pay fine of TZS 500,000/= or imprisonment for a term of 1 year in default of a fine. Meanwhile, the accused should compensate the victim 16,500,000/= being the actual value of 300 bags of maize the subject of this case which were entrusted to the convict."*

And,

Warrant Order stated that;

*"....and was sentenced to pay a fine of Tshs. 500,000/= or one year in jail and compensation of Tshs. 16,500,000 to be paid with the fine."*

As rightly stated by the counsel for the applicant, there is a contradiction between the two in interpreting the matter. The court upon perusal of the Judgment on page 27 which extracted the Order

stated clear however the Warrant gave the different meaning which led the prison officer not to release the applicant.

It is my considered view that the judgment which was pronounced on 20<sup>th</sup> April, 2022 and the order should reflect in the warrant order. What is immediately noted from the Warrant order has been totally changed because it contradicts what was stated in the judgment which as a matter of fact should be adhered to. Failure to extract what was stated in the judgment makes the order incompetent. As noted from the record, the applicant paid the fine in a receipt dated 27 June, 2022 as Annexed herein as H- 1 and H-2.

Therefore having examined the records of the trial court to satisfy the correctness, legality, or propriety of the sentence against the committal order in the warrant of committal issued by the trial court, I find there was a wrong interpretation in the Warrant Order. Since the applicant had already paid the fine of TZS 500,000/= as per judgement it is not fair for him to stay in prison for such a long time. Therefore I order him to be released immediately from prison and compensation of TZS 16,500,000/= shall be recoverable in like manner.

Order accordingly.



**A. BAHATI SALEMA**

**JUDGE**

**16/9/2022**

Ruling delivered under my hand and seal of the court in the Chamber, this 16<sup>th</sup> day of September, 2022 in the presence of both parties, via virtual court.



**A. BAHATI SALEMA**

**JUDGE**

**16/09/2022**

Right to appeal is hereby explained.



**A. BAHATI SALEMA**

**JUDGE**

**16/09/2022**

