

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
THE SUB-REGISTRY OF MOSHI
AT MOSHI**

CRIMINAL REVISION NO.15818/2024

REPUBLIC

VERSUS

- 1. DAVID SHOO**
- 2. ELIA YONA GODFREY**

RULING

13th & 14th June, 2024.

A.P. KILIMI, J.:

This is a revision matter commenced by the Court *suo motu* following a letter of complaint dated 7th June, 2024 addressed to the Hon. Judge in Charge concerning the manner the surety of the second accused mentioned above in Criminal Case no. 28 of 2024 at the District Court of Moshi was sentenced to six months imprisonment in lieu of forfeiture of Bond imposed. Therefore, this revision proceeding has the purpose for this court to satisfy itself as to the correctness, legality or propriety of the orders and sentence affected the said surety.

Before embarking on the merits of this revision, I find apposite, albeit briefly, to give sequence of events leading to the sentence of the said surety

as obtained from the record of the trial court. In the District Court of Moshi at Moshi in Criminal Case No 28 of 2024, one David Shoo and Elia Yona Godfrey first and second accused were charged by the Republic for theft. The first accused was convicted in his own plea of guilty. In respect to the remained second accused, the trial court set conditions for bail. Hashim Ally Msoma was approved to be the surety for him and he did sign a bond of Tshs 2,000,000/= (Two Million) in respect thereof. Later the second accused person jumped the bail, the record reveals later on 5th June 2024, the surety appeared before the court to explain his offer in respect to the accused he believed will not let him down. The trial court after heard his offer, considered has nothing to be forfeited as Bond and consequently sentenced him to serve six months imprisonment.

In considering the above facts I find appropriate to call both parties, the victim and the Republic to address me on what transpired at the trial court. The applicant Hashimu Ally Msoma appeared in person unrepresented whereas the Republic had the service of Mr. Isack Mangumu, learned State Attorney.

The applicant submitted that, he was given two weeks to search for the accused but failed to know where he was. When he appeared at the trial

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court, he was arrested and told by the learned Magistrate to pay bond at the tune of Tshs. 2,000,000/= or be imprisonment for six months. The applicant further said he prayed to the Magistrate to be given time to find for that money, and his mother who was around, run outside and secured the said amount and paid to the court, by then the surity was remanded by police at court lock up, but later he was sent by police at Karanga Prison. He further said he has stayed in prison for a week and one day, therefore prays this court to be bailed or be released under conditions.

Responding to the applicant's submissions above, Mr. Mangumu did not object the application, and said on 5/6/2024 the applicant was called in court; therefore, he was required to show cause why he should pay the bond or be sentenced to six months imprisonment. After hearing the accused on that day, the Learned trial Resident Magistrate ordered the accused be imprisoned for six months, at the same time the said bond was paid by applicant's relative.

Mr. Mangumu further submitted that, the provision governs the manner surety should be dealt with after accused jumped bail is provided under section 160(1) of Criminal Procedure Act Cap. 20 R.E. 2022 'CPA' and the next subsections must be read cumulatively, which provides for

procedure to be followed. He added that, the procedure is to give time for surety to pay, if he defaults the next step, is to attach his property and if he had no property then sentence of six months should proceed. Mr. Mangumu said the trial magistrate did not follow the procedure of attaching property, which was to be done before continuing with next step of sentencing the applicant. The learned State Attorney concluded that the procedure was clearly not followed therefore it was illegal. But also added the applicant has already complied by payment of the said Bond. Thus, he prays the applicant be released as a surety.

Having considered the above submissions and the record of the trial court, the issue for determination is whether there is illegality conducted before the trial court, sentenced one Hashim Ally Msoma as surety to serve six months in prison.

Section 160 of the CPA sets out procedures for forfeiture where an accused person jumps bail, according to the Tanzania Judiciary Bail Guidelines 2020 at page 21 the procedure to be followed from this provision of the law were simplified as follows;

"(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;

(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;

(c)N/A

(d) if the penalty amount is not paid and cannot be recovered by attachment the surety shall be liable to six months imprisonment."

[Emphasis added].

According to the record of the trial court, **first**, although at page 10 the surety conceded to be given time to search for accused, the record does not show exactly when he was given that right. **Secondly**, the record also shows the surety told the court that he has no property to be forfeited in lieu of the bond he imposed, the record reveals further the trial court find him liable under section 160 (4) and proceeded to sentence him six months imprisonment.

As rightly argued by Mr. Mangumu that the procedure was not followed therefore it was illegal. In my view of the above stated law, even if the surety declared he has no property, the trial court was required to give the surety reasonable time to pay the amount determined by the court and in case of default, it is when the trial court was supposed to issue warrant of attachment and sale of surety's movable property if any. (See section 160 (2) of CPA). Thus, in my view what trial court did was jumping into the last step before exhausting all necessary steps according to the law.

Therefore, I may say, though the surety said he has no property, before the trial court concluded, he has another chance of being given time for the payment of the said amount. In my scrutiny of the trial court record, that time was not availed to him. Actually, the record at page 10 shows after the said accused jumped bail, surety appeared at the trial court at once on 5th day of June 2024, and there at all the above procedures of the law were concluded the same day. In the circumstances, I am satisfied the above procedures were flawed, hence illegality is apparently.

Be that as it may, on the same day the surety was sentenced to six months in prison, his relative paid the said bond amounting Tshs.

2,000,000/= via control No. 991401130291. Unfortunately, despite of such payments the surety was sent to prison as ordered.

Nevertheless, before I pen off, I think I am indebted to urge learned Magistrates to take time to read the Guidelines and handbooks published by the Judiciary of Tanzania, these are guidance made to enhance the efficiency of Judicial officers in their carriers, in my research I have found there are more than five guidelines for judicial officers available electronically on our eminent TANZLII website.

As alluded hereinabove, the sentence of six months imprisonment to the surety was clearly uncalled for and cannot be allowed to stand forthwith. Consequently, in exercising my powers of revision under s. 373 (1) of the CPA, I hereby set aside the sentence of six months and I accordingly order Hashimu Ally Msoma be released from custody forthwith unless he is otherwise lawfully held.

It is so ordered.

DATED at **MOSHI** this 14th day of June, 2024.





A. P. KILIMI
JUDGE
14/06/2024

Court: - Ruling delivered today in the presence of Mr. John Mgave, State Attorney for the Republic and Applicant personally present.

Sgd: A. P. KILIMI
JUDGE
14/6/2024