

TANZANIA / JUDGMENT

# ally amon eliyakunda vs republic

## 2022 tzhc 11793 28 june 2022

COURT  
TZHCDECIDED  
28 June 2022

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM  
MISC CRIMINAL APPLICATION NO. 34 OF 2022 (Originating from P.I No. 5 of 2020 of District  
Court of Temeke) ALLY AMON ELIYAKUNDA ..... APPLICANT VERSUS  
REPUBLIC..... ..RESPONDENT Date of last Order: 24/6/2022 Date  
of Ruling: 28/6/2022

### RULING

MGONYA, J. This is an Application for this court to grant relief to the bail conditions granted to the Applicant by the Temeke District Court. The same has been brought by the Applicant one ALLY AMON ELIYAKUNDA who is charged with an offence of Attempt Murder. The copy of the proceedings from Temeke District Court with the bail conditions thereto is attached to this application. Submitting for his Application, the Applicant prayed the court to grant relief to the bail conditions by the Temeke District court. The said conditions are as hereunder: - i

1. Two (2) reliable sureties one of the sureties being the Government employee.
2. Sureties to produce introduction letters from Government Authorities and IDS.
3. Each surety to sign bail bond of Tshs 5,000,000/-. Responding to the Applicants prayer, Ms. Imelda Mushi who was representing the Republic, the Respondent herein was on the view that, the conditions offered to the Applicant are fair and manageable according to the offence he is charged. From that observation, the learned State Attorney prayed the Application be denied and dismissed. Before I determine this Application, I have to declare that, the primary purpose of remanding an accused person in custody is not to punish him (for courts may only punish a person found guilty of an offence) but to ensure that he will appear to take his trial and not seek to evade justice by leaving the jurisdiction of the court. One may refer the case of JAFFER v.R, (1972) H.C.D 92 B. Remanding a man in custody necessarily involves the curtailment of his personal liberty. In a majority of cases, such a course is considered to be undesirable, and so courts are empowered, not to set accused persons free, but to give them temporary release from custody while at the same time ensuring 2 that the accused person in question will appear to take his trial on the date to be fixed by the Court. Subject to certain statutory restrictions, all offences, other than murder

or treason, are generally bailable. But some of the statutory restrictions are such that they appear to create other categories of non-bailable offences. For bailable offences, section 148(1) of the Criminal Procedure Act, 1985 provides that where a person appears or is brought before a court, and such person is prepared before that court to give bail, the court may, subject to certain restrictions, admit that person to bail or release him on his executing a bond with or without sureties for his appearance at his trial or resumption of the trial at a given time and place. Having said so, it is from the record and particularly from the Application at hand, it came to my knowledge that the Applicants offence is Attempt Murder of which is bailable hence the above bail conditions. I had an opportunity of going through the bail conditions granted to the Applicant as seen above. It is my firm observation that the said conditions are not only fair, but manageable. This is so as to adhere to the meaning of bail and its purpose. 3 The conditions offered are sufficient since the court needs to have an assurance of the accused's who is the Applicant herein to his attendance when this case is called; while enjoying his constitutional right of right to bail. Having said so, I proceed to dismiss this application for being misconceived. Bail condition granted to the Applicant by the Temeke District court are to be adhered to and they are accordingly sustained. It is so ordered. L.E. MGONYA JUDGE 28/6/2022 Court: Ruling delivered in my chambers in the presence of the Applicant, Ms. Imelda Mushi State Attorney for the Respondent and Ms. Veronica RMA, this 28th day of June, 2022. /Z v' 1/ 6 X' L. E. MGONYA JUDGE 28/6/2022 4

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