

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**MISC. CRIMINAL APPLICATION NO. 239 OF 2021**

*(Originating from High Court of United Republic of Tanzania, District Registry of Dar es Salaam at Dar es Salaam in the Matter of an Application for bail pending trial in Criminal Session Case No. 100 of 2016)*

**MASIKU MBARAKA ----- APPLICANT**

**VERSUS**

**THE REPUBLIC ----- RESPONDENT**

*Date of last Order: 11/11/2021*

*Date of the Ruling: 11/11/2021*

**R U L I N G**

**MGONYA, J.**

The matter before the Court is for the Applicant to be bailed out pending the trial *denovo/retrial* of his case which the proceedings, conviction and sentences were nullified by the Court of Appeal in its Judgment dated **29/07/2021**.

In the cause of hearing, Ms. Imelda Mushi, the learned Counsel for Republic informed the Court that, after going through the said Judgment, they have detected that, apart from the above stated Court of Appeal Orders, it was further

ordered that: ***The Appellant, Applicant herein to remain in custody as a Remandee Pending Retrial.***

After going through the said Judgment, I am satisfied that, indeed the Court ordered the Applicant to remain in custody pending his retrial. The word used by the Court is “**shall remain in custody as a Remandee Pending Retrial**”. As we all know that, the word **SHALL** connotes **MANDATORY** and **FIRM**.

In the event therefore, the Application before the Court is **MISCONCEIVED** and therefore **DISMISSED** in its entirety.

It is so ordered



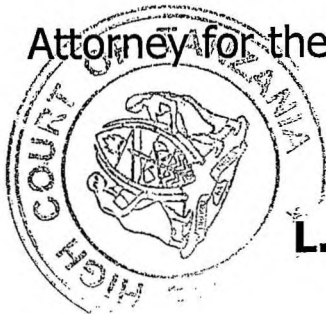
A handwritten signature in black ink, appearing to read "L. E. Mgonya".

**L. E. MGONYA**

**JUDGE**

**11/11/2021**

**Court:** Ruling delivered in my chambers in presence of Applicant in person, Ms. Imelda Mushi, State Attorney for the Respondent and Mr. Richard, RMA.



A handwritten signature in black ink, appearing to read "L. E. Mgonya".

**L. E. MGONYA**

**JUDGE**

**11/11/2021**