**Mahmood v Republic**

**Division:** High Court of Tanzania at Dar Es Salaam

**Date of judgment:** 30 December 1972

**Case Number:** 106/1972 (100/74)

**Before:** Biron J

**Sourced by:** LawAfrica

*[1] Criminal Practice and Procedure – Irregularity – Bond discharged in absence of accused – Order*

*valid until set aside – Whether failure of justice occasioned – Criminal Procedure Code, s.* 346 (*T*)*.*

*[2] Criminal Practice and Procedure – Irregularity – Order – Whether any order of criminal court can*

*be null and void – Criminal Procedure Code, s.* 346 (*T*)*.*

**Editor’s Summary**

The applicant was security for the attendance of the accused in a criminal case. When the accused failed to appear, the accused applied for discharge from his bond, which discharge was granted.

Thereafter on a later date the applicant was ordered to forfeit his bond.

He applied to the High Court to review this order, and the respondent argued that the first order was a nullity and could be ignored although it had not been set aside by a superior court.

**Held –**

(i) the first order is valid, even if made irregularly, until set aside by the High Court;

( ii) an order irregularly made can only be set aside when the irregularity has occasioned a failure of justice;

(iii) to uphold the forfeiture of a bond already set aside would occasion a failure of justice.

Application allowed.

**Cases referred to Judgment:**

(1) *Queen Empress v. Husein Gaibu*, I.L.R. Bom. 1884, Vol. 8, 307.

(2) *Rakhu Sarif v. Panchanon Mondal*, A.I.R., [1937] Cal. 256.

(3) *Mohammad Hanif v. State of Madhya Pradesh*, A.I.R. [1951] Nag. 185.

(4) *Macfoy v. United Africa Co.*, [1962] A.C. 152; [1963] 3 All E.R. 1169.