

**IN THE HIGH COURT OF TANZANIA**

**AT ARUSHA**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 105 OF 2013.**

(C/F Resident Magistrates' Court of Arusha Criminal Case No. 04 of  
2013)

**REHEMA <sup>D</sup>/o GALI YA MOSHI KOMBA ..... APPLICANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**Date of last order: 02/05/2014**

**Date of Ruling: 02/07/2014**

**RULING.**

**MWAIMU, J.**

The applicant Rehema Gali ya Moshi has filed this application under section 27 (2) of the Drug and Prevention of Illicit Traffic in Drug Act Cap 95 RE and Section 148 (1) and (3) of the Criminal Procedure Act Cap 20 R.E. 2002 seeking to be granted bail pending the trial of Criminal Case No. 4 of 2013 now pending before the Resident Magistrates' Court of Arusha. The application is supported by an affidavit sworn by the applicant. The respondent filed a counter affidavit opposing the application.

Mr. Mhyella who represented the applicant submitted that the applicant has been charged with the offence of Trafficking Drugs contrary to section 16 (1) (b) of the Drugs and Prevention of Illicit Traffic in Drugs Act Cap 95 RE 2002. He said, the provision does not prohibit bail when read together with section 27 (1) (b) of the Act (supra) as while the provisions can be understood that the offences of trafficking drugs are not bailable, there is an exception to the general rule and that reading the two provisions (between lines) it can be noted that the Parliament did not mean it to be interpreted ultra vires the basic rules of statutory interpretation on the offence of trafficking of narcotic drugs. He contended that in terms of section 27 (1) (b) bail can only be curtailed if,

- “a) such drugs should be of a value exceeding Tzs. ten million
- b) such value should be necessarily certified by a Commissioner for national Drugs Control
- c) The drugs should be in trafficking.”

He further contended that as long as the applicant has been in custody for a bare charge sheet on the offence contrary to section 16 (1) (b) of Cap 95, with no supportive legal documents like a value certificate from the Commissioner for National Coordination of Drugs Control as a mandatory requirement for restricting bail, the applicant deserves to be granted bail.

Ms Twide learned State Attorney who represented the respondent opposed the application. She argued that the applicant has been charged with the offence of Trafficking of Drugs contrary to section 16 (1) (b) (i) as amended by section 31 of Act No. 2 of 2012. She said, the Cap 95 distinguishes the meaning of the word "court" when it comes to the interpretation of a "subordinate court" and the "High Court" in drug trafficking cases. She said that for the purposes of offences under section 12 a "court" means a subordinate court. As to sections 16 to 23 the court means the High Court and in that respect the Court cannot admit an accused person to bail.

I have given due consideration the submissions by both parties and the issue is whether the offence the applicant is charged with is bailable. There is no doubt that according to the charge sheet filed before the Resident Magistrates' Court the applicant and one Joseph Msami @ Kombe @ George @ Rasta have been jointly and together charged with the offence of Trafficking of narcotic Drugs contrary to section 16 (1) (b) (i) of the Prevention of Illicit Trafficking in Drugs Act as amended by section 31 of the Written laws (Miscellaneous Amendments) Act No. 2 of 2012. Joseph Msami stood as the first accused. Following the charge Joseph Msami applied for bail in this Court in Criminal Application No. 5 of 2013 and his application was struck out on ground that it was incompetent.

Section 16 (1) (b) be of the Prevention of Illicit Trafficking in Drugs Act as amended by section 31 of the Written laws (Miscellaneous Amendments) Act No. 2 of 2012 provides:

16 Any person who –

(b) trafficking in any narcotic drug or psychotropic substance commits an offence and upon conviction shall be sentenced to life imprisonment.

Section 27 (a) on bail provides:

27. (1) A police officer in charge of a police station, or a court before which an accused is brought or appears shall not admit that person to bail if–

(a) that person is accused of an offence involving trafficking in drugs, narcotics or "psychotropic substances" but does not include a person charged for an offence of being in possession of drugs which taking into account all circumstances in which the offence was committed, was not meant for conveyance or commercial purpose;

(b) that person is accused of an offence involving heroin, cocaine, prepared opium, opium poppy (*papaver setigerum*) poppy straw, coca plant, coca leaves, cannabis sativa or cannabis resin (Indian hemp), methaqualone

(mandrax) catha edulis (khat) or any other narcotic drug or psychotropic substance specified in the Schedule to this Act which has an established value certified by the Commissioner for the National Co-ordination of Drug Control exceeding ten million shillings.

I think the learned counsel for the applicant misinterpreted the law. Section 27 (1) (a) prohibits the granting of bail to a person if is accused of an offence involving trafficking in drugs, narcotics or "psychotropic substances" and possession of drugs meant for conveyance or commercial purpose. It excludes a person charged for an offence of being in possession of drugs which taking into account of all circumstances in which the offence was committed, was not meant for conveyance or commercial purpose. This means, the latter person may be granted bail. Section 27 (1) (b) deals with other offences and in no way is connected to trafficking in drugs and possession of drugs meant for conveyance or commercial purpose. As depicted in S. 27 (1) (a). In this respect a certificate from the Commissioner for National Drugs Control is not necessary in considering bail to an accused person charged with the offence of trafficking in drugs or who is found in possession of the drugs for conveyance or commercial purpose.

S. 148 (1) and (3) of the CPA cited by the learned counsel for the applicant are irrelevant in this case as S. 27 (1) (a) strictly curtails bail.

In this respect the relevant provision which curtails bail to the offence of trafficking in drugs is section 27 (a) of the Drug and Prevention of Illicit Traffic in Drug Act which strictly prohibits the police and the courts of law from granting bail to the accused person.

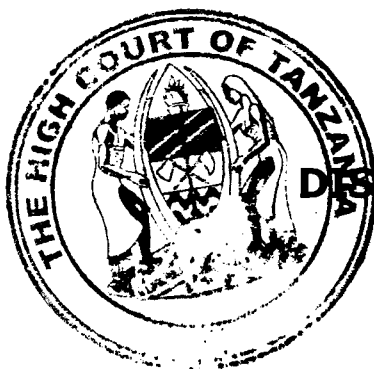
For those reasons the application for bail is dismissed. The applicant is denied bail. She should stay in custody pending the hearing of the case.

**SGD: M. P. M. Mwaimu**  
**JUDGE**  
**02/07/2014**

Ruling delivered on this 02<sup>nd</sup> day of July, 2014 in the presence of Mr. Mhyella for the applicant and the applicant and Ms Twide for the respondent.

**SGD: M. P. M. Mwaimu**  
**JUDGE**  
**02/07/2014**

I hereby certify this to be a true copy of the original.



*[Signature]*  
**DISTRICT REGISTRAR**  
**ARUSHA**

*3/7/14*