

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

**MISC. CRIMINAL APPLICATION NO 185 OF 2019**

**(Originating from Criminal Case No. 53 of 2019 in the Resident Magistrate's  
Court of Dar es Salaam at Kisutu)**

**RAMADHAN MUSA KABADAN @ BONGE ..... 1<sup>ST</sup> APPLICANT**

**HAMISI HASSAN MFINANGA @ H ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

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

**RULING**

*16<sup>th</sup> December, 2019 & 20<sup>th</sup> December, 2019*

**KISANYA, J**

This is application for bail pending trial has been filed by the Applicants who are charged with offence of trafficking in narcotic drugs contrary to section 15(1) (a) of the Drugs Control and Enforcement Act, No 5 of 2015 as amended, read together with paragraph 23 of the First Schedule to the and sections 57(1) and (2) of the Economic and Organized Crime Control Act, (Cap 200 R.E. 2002) as amended.

The case against the applicants is pending in the Resident Magistrate Court of Dar es Salaam at Kisutu. It is alleged that on the **13<sup>th</sup> day of June 2019**, the

applicants jointly and together trafficked in narcotic drugs, namely heroin hydrochloride weighing **1, 028.20 grammes**.

The Republic filed a preliminary objection on point of law that the application contravenes section 29(1) (a) of the Drugs Control and Enforcement Act, No. 5 of 2015 as amended. When this application was set for hearing of the preliminary objection, the applicants who were also present, were represented by Mr Saul Kusakala, learned advocate and Ms Batilda Mushi, learned State Attorney appeared for the Respondent/ Republic.

It was submitted by the learned State Attorney that the application contravenes section 29(1)(a) of the Drugs Control and Enforcement Act, No. 5 of 2015 as amended by Act No. 15 of 2017 which provides that offence of trafficking in drugs is not bailable if the the drugs involed weighs 20 grammes or more. She argued that the applicants are charged with the offence of trafficking in drugs namely heroin hydrochloride weighing **1,028.20 grams**. The learned State Attorney contended further that section 148(3) of the Criminal Procedure Act (Cap. 20 R.E. 2002) referred to in the Chamber Summons does not apply as offence of trafficking in drugs is non-bailable under subsection (5)(a)(ii) thereto.

Mr. Kusakala, learned advocate conceded that the applicants are charged with a non-bailable offence because the charge sheet indicates that they trafficked more than 1000 grams of heroin hydrochloride. He prayed that this application be struck out.

I have given due consideration of the submissions by both parties. Although an accused is entitled to bail on the basis of right to presumption innocence enshrined under Article 13(6) (b) of the Constitution of the United Republic of Tanzania, it is granted in accordance with the law. As rightly stated by the learned

State Attorney and conceded by the learned advocate for the applicants, offence of trafficking in drugs is bailable only if the drugs in question weighs less than twenty grammes. This is pursuant to section 29(1)(a) of the Drugs Control and Enforcement Act, 2015 as amended by Act No. 17 of 2017 which provides as follows:

*“29.-(1) A police officer in charge of a police station or an officer of the Authority or a court before which an accused is brought or appear shall not admit the accused person to bail if-*

*(a) that accused is charged of an offence involving trafficking of Amphetamine Type Stimulant (ATS), heroin, cocaine, mandrax, morphine, ecstasy, cannabis resin, prepared opium and any other manufactured drug weighing twenty grammes or more;”*

The applicants in the case at hand have been charged with offence of trafficking in narcotic drugs namely heroin hydrochloride **weighing 1, 028.20 grammes**. Therefore, this Court cannot admit the applicant to bail as that would contravene the provisions of section 29(1)(a) of the Drugs Control and Enforcement Act, 2015 as amended. Further, offence of illicit trafficking in drugs not bailable under section 148(5) (a) (ii) of the Criminal Procedure Act (Cap. 20, R.E. 2002). That said, and <sup>as</sup>so prayed by the counsel for the Applicants, I accordingly stuck out this application for being incompetent before this Court.

Order accordingly.

Date at Dar es Salaam this **20<sup>th</sup> day September, 2019.**



  
E. S. Kisanya  
**JUDGE**