

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
IN AT SHINYANGA**

MISC. CRIMINAL APPLICATION NO. 8 OF 2020

*(Arising out of Economic Crimes Case No. 07/2020 from the Resident Magistrate Court
of Shinyanga at Shinyanga)*

SAID ABUBAKARI MBARAKAAPPLICANT

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

RULING

Date of the last Order: 29th July, 2020

Date of the Ruling: 21st August, 2020

MKWIZU, J.:

This is an application for bail consideration under sections 29 (4), 36 (1) of Economic and Organized Crimes Control Act Cap 200 R.E. 2002, and section 392A (2) of the Criminal Procedure Act as amended by the Written Laws (Misc. Amendments) Act, No. 3 of 2011. The application is supported by an affidavit sworn by the applicant on 14/4/2020.

Applicant stand charged for being in unlawful possession of narcotic Drugs: contrary to section 15 (1) (a) and section 29 (1) (a) of the Drugs Control and Enforcement Act No. 5 of 2015 as amended by Drugs Control Enforcement (Amendment)Act No. 15 of 2017 read together with paragraph 23 of the 1st schedule to and section 57 (1) of the Economic and Organized Crime Control Act Cap 200 R.E. 2002 as amended by the Written Laws (Miscellaneous Amendments) Act No. 3 of 2016. The particulars of the charge are that on 28th day of February, 2020 at Malunga area within Kahama District in Shinyanga Region, applicant was found in unlawful possession of the narcotic drugs namely heroin weighting 41.00 grams.

The application was heard orally, applicant was in person, without legal representation while respondent /Republic had the services of Ms. Immaculate Mapunda, learned State Attorney. Supporting the application, applicant first adopted the affidavit ins support of the application. He said, the offence under which he is charged is bailable. He prayed to be granted bail as he is ready to attend the court whenever required.

He added that, He is a father of four children one of whom is sick and his wife is a house wife. Applicant argued further that he has reliable sureties to meet bail conditions to be set by the court and that he will be available whenever required by the court.

On her part, Ms. Mapunda opposed the application. Her main grounds were (1) the investigation is still under way and that (2) through the 2018 amendment on the Drugs Control Enforcement Act, Cap 95, the law under section 29 (1) (a) provided that a person found with Heroin above 20 grams is not bailable. Ms. Mapunda said, applicant was found with heroin 41.00 grams and therefore not bailable.

In rejoinder submissions, applicant insisted that it is section 148 (5) of the CPA which defined bailable and non bailable offences, under that section the offence facing him is bailable and therefore insisted that he should be granted bail.

I have passionately considered the application and the parties submission. The issue for my determination is one whether the offence is bailable or not. 29 (1) of the Drugs control and Enforcement Act, provides:

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 person is charged of an offence involving trafficking of Amphetamine type stimulant (A TS), **heroin, cocaine** mandrasmorphine, ecstasy, cannabis resin, prepared opium and any other manufactured drug **weighing twenty grams or more.***

b. That accused is charged of an offence involving trafficking of cannabis, khat and any other prohibited plant weighing twenty kilogram or more, and

c. That accused person is charged of an offence relating to precursor chemical other substances proved to have drug related effect or substances used in the process of manufacturing drugs,

thirty litres in liquid form and thirty kilograms in solid form or more" (bold is mine)

The above section is one under which the applicant is charged with. Subsection (1) (a) is self-explanatory, it restricts bail to a person charged of an offence involving trafficking heroin, weighing twenty grams or more.

This being the case, applicant is charged by unbailable offence hence his application fails.

It is so ordered.

Dated at Shinyanga this 21 day of August, 2020



E.Y. MKWIZU
E.Y.MKWIZU
JUDGE
21/8/2020