

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
AT TABORA

TABORA DISTRICT REGISTRY

MISC. CRIMINAL APPLICATION No. 92 OF 2019

(Original Criminal Case No. 13 of 2019 of the District Court of Nzega District)

GERALD S/O DAUD @ AMOS S/O KAPANGALA..... APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

.....
RULING
.....

Date of Last Order: 14/02/2020

Date of Delivery: 06/03/2020

AMOUR S. KHAMIS, J.:

This ruling is on a preliminary objection fronted by the Republic on competency of the application for bail lodged by Gerald Daud @ Amos Kapangala.

The objection was that a chamber application was made under improper provisions of the law.

Gerald Daud @ Amos Kapangala stand charged on the District Court of Nzega for two counts the first being unlawful possession of narcotic drugs contrary to Section 15A (2) (c) and Section 15A (1) of the Drugs control and Enforcement Act No. 5 of 2015 as amended by

Section 9 of the Drugs control and Enforcement (Amendment) Act No.15 of 2017 read together with paragraph 14 of the first schedule to and Sections 57 (1) and 60 (2) of the Economic and organized crimes control Act, Cap. 200, R.E. 2002 as further amended by the written Laws (Misc. Amendments) Act No. 3 of 2016.

The second count is unlawful possession of prohibited plastic begs contrary to Section 230 (2) (f) of the Environment Management Act read together with Regulation 08 (e) of the Environment Management (prohibition of plastic carrier bags) Regulations, 2019.

Pending trial and determination of the charges in the District Court of Nzega, the applicant presented the present application for bail.

The application was brought through a chamber summons supported by an affidavit of Sostenes Peter Mselingwa, learned advocate and made under Sections 148 (1), (3), and 148 (5) (a) (ii) and (iii) of the Criminal Procedure Act, Cap.20, R.E. 2002 and Section 29 (4) of the Economic and Organised crimes control Act, Cap. 200, R.E. 2002.

At a time of hearing, Mr. John Mkonyi, learned State Attorney for the Republic, asserted that Sections 148 (1), (3), (5) (a), (2) and (3) of the Criminal Procedure Act were irrelevant for charges related to possession and or trafficking in narcotic drugs.

Mr. Mkonyi, submitted that a relevant provisions was Section 29 (1) (b) of the Drugs control and Enforcement Act No.5 of 2015.

Mr. Sostenes Mselingwa, learned advocate for the applicant strongly argued that all provisions cited in the Chamber summons were relevant.

He contended that section 29 (3) of the Drugs control and Enforcement Act provided applicability of the Criminal Procedure Act to drugs cases.

The issue is whether wrong provisions of the law were cited in the Chamber Summons.

I will start with reproduction of Sections 148 (1), (3), (5), (a) and (iii) of the Criminal Procedure Act cited by the applicant:

“148 (1) where any person is arrested or detained without warrant by an officer in charge of a police station or appear or is brought before a Court and is prepared at any time while in the custody of that officer or at any stage of the proceedings before that Court to give bail the officer of the Court, as the case may be, may, subject to the following provisions of this Section, admit that person to bail; save that the officer or the Court may, instead of taking bail from that person, release him on his executing a bond with or without sureties for his appearance as provided in this Section.

(3) The High Court may, subject to subsections (4) and (5) of this section, in any case direct that any person

be admitted to bail or that the bail required by a subordinate Court or a police officer be reduced.

(5) A police officer in charge of a police station or a Court before whom an accused person is brought or appears, shall not admit that person to bail if

(a) That person is charged with.

(i) Murder treason, armed robbery, or defilement

Illicit trafficking in drugs against the Drugs and prevention of illicit Traffic in Drugs Act, 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 meet for conveyance.

(iii) An offence involving herein, cocaine, prepared opium, opium poppy (papaver setigeum), poppy straw, coca plant, coca leaves, cannabis sativa or cannabis resins (Indian hamp), methaqualone (mandrax), cathaedulis (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 National coordination of Drugs control commissions, as exceeding ten million shillings.”

Section 29 (4) (d) of the Economic and organised crime control Act, Cap.200, R.E. 2002 reads that:

“29 (4) After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and for the purposes of this Section the power to hear bail applications and grant bail.

(d) In all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby rested in the High Court.

On the other hand, Section 29 (1) of the Drugs control and Enforcement Act No. 5 of 2015, reads that:

“29 (1) A police officer incharge 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 stimulate (ATS), herein, cocaine, madrax, morphine, casestacy, cannabis resin, prepared opium and any other

manufactured drug weighing two hundred grams or more.

(b) That accused is charge of an offence involving trafficking of cannabis, khat and any other prohibited plant weighing one hundred kilograms or more, and

(c) For precursor chemicals weighing more than thirty litres or one hundred kilograms, in solid form.

In **ABDALLAH HAMIDU KUMBUKA V.R (1980) TLR 289** the Court of Appeal held that in Tanzania marginal notes can be and are referred to, if necessary.

The same principle was stated in **LUBASHA MADERENYA AND ANOTHER VR, 1979** (unreported) wherein Nyalali C.J (as he then was) applied operative words of Section 26 (2) of the Penal Code in statutory interpretation.

By their wordings, Section 29 of the Drug control and Enforcement Act No. 5 of 2015 and Section 148 (5) of the Criminal Procedure Act, Cap. 20, R.E. 2002 are similar.

Whereas the former provision relates to unbailable offences premised on narcotic drugs and psychotropic substances, the latter is generally used for all unbailable offences.

The particulars of offence against the applicant show that he was found in possession of narcotic drugs to wit, cannabis weighing 25.8 kilograms.

There is no doubt that the applicant faces a charge hinged on narcotic drugs and psychotropic substance of which the Drugs control and enforcement Act, 2015 applies.

In my view, that being a specific legislation on narcotic drugs, its provisions take procedure over those of the Criminal Procedure Act.

I am fortified in the position by the Court of Appeal decision in **JAMES SENDAMA V. REPUBLIC, CRIMINAL APPEAL No. 279 B OF 2013** (unreported) wherein, it was held that:

“It true that the provisions of the National prosecutions Act empowers the DPP to delegate any of his functions but we do not agree that it has the effect of overriding GN 191 of 1984. This is so because, first, the National Prosecutions Act is a statute of general application. Normally, such a statute would not apply where there is a specific legislation in existence on a specific subject; unless the wording of the particular, provisions suggests otherwise.”

For the aforesaid reasons, I could not agree more with the learned State Attorney that the applicant’s omission to cite relevant provisions of the Drug control and Enforcement Act No. 5 of 2015 renders the application incompetent.

In the upshot the preliminary objection is sustained and the application is struck out.

It is so ordered.

AMOUR S. KHAMIS

JUDGE

06/03/2020

I certify that this is a true and correct
copy of Original Judgment/Ruling/Order

Deputy Registrar
Date 3/03/2020 at Lahore