

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

MISC. CRIMINAL APPLICATION NO.250 OF 2019

*(Originating from Criminal Case No. 73 of 2018, at Kisutu Resident
Magistrate's Court)*

JUMA RIDHIWANI MOHAMED1st APPLICANT
FRANK BENEDICT LEMAN2nd APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Last Order: 17th Mar 2020
Date of Ruling: 23th Mar 2020.

E. E. Kakolaki, J

This is an application for bail by the applicant brought at the instance of **Grand Attorneys** supported by the affidavit sworn by **Hassan Kiangio** applicants' advocate. It is preferred under sections 148 (3) and (5)(e) of the Criminal Procedure Act, [Cap. 20 R.E 2002]; S. 29(4)(d) and 36(1),(5),(7) of the Economic and Organized Crime Control Act [Cap. 200 R.E. 2002] and any other enabling law.

The applicants were arraigned before the Resident Magistrate's Court of Dar es Salaam at Kisutu, facing charges on the offence of Trafficking in Narcotic Drugs; Contrary to section 15(1) and (2) of the Drugs Control and Enforcement Act, No. 5 of 2015 read together with paragraph 23 of the Economic and Organized Crime Control Act, [Cap. 200 R.E 2002] as amended by Act No.3 of 2016. The application is opposed by the Republic/Respondent.

It is stated in the charge sheet that the applicants on 29/9/2019 at Kigogo area within Ubungo District in Dar es salaam Region, were jointly and together found in possession of Narcotic Drugs namely Cannabis Sativa commonly known as "bhangi" weighing 108.41 kilograms.

When the application came for hearing before me on 17/03/2020, the applicant were unrepresented whereas the Respondent/Republic was represented by Mr. Genes Tesha learned Senior State Attorney. The applicants who were formerly represented by Mr. Hassan Kiangio learned advocate and who unfortunately on that day failed to enter appearance in court, informed the Court that their application had spent longer in court without being heard because of their advocate missing some court sessions. That they were therefore not ready for further adjournment of the matter for the reason of none appearance of their advocate and thus prayed the court to disqualify him from the conduct of this matter and to allow them proceed with hearing on their own. The applicant's prayer was granted and the hearing proceeded.

Submitting on their application the applicants informed the court that they were asking this court to grant them bail believing that the offence facing them is bailable and that they have reliable sureties and were ready to abide to the conditions set by the court. Opposing the

application Mr. Tesha was of the view that the offence with which the applicants are facing is not bailable under section 29(1)(a) of the Drug Control and Enforcement Act, No. 5 of 2015 as amended since the weight of the drug they were found in possession with is 108.41 kilograms far from the weight which bail is allowed, which is 20 kilograms or less. He therefore prayed for dismissal of the application for want of merit. Rejoining both applicants had nothing useful to add apart from stressing that from what they know and believe this Court can grant them bail as it is within its powers and discretion.

The issue for determination is whether the applicants are entitled to bail as prayed. This application has been preferred under Section 148 (3) and (5)(e) of the Criminal Procedure Act, [Cap. 20 R.E 2002]; S. 29(4)(d) and 36(1),(5),(7) of the Economic and Organized Crime Control Act [Cap. 200 R.E. 2002] and any other enabling laws. As per the charge sheet the case facing the applicants was preferred as economic crime case and it reads as follows:

IN THE RESIDENT MAGISTRATE COURT OF DAR ES SALAAM

AT KISUTU

ECONOMIC CRIME CASE NO. 119 OF 2019

REPUBLIC

Versus

1. JUMA RIDHIWAN MOHAMED

2. FRANK BEEDICT LEMAN

CHARGE

STATEMENT OF DEFENCE

TRAFFICKING IN NARCOTIC DRUGS: *Contrary to section 15(1) and (2) of the Drugs Control and Enforcement Act, No. 5 of 2015 read together with paragraph 23 of the Economic and Organised Crime Control Act, [Cap. 20 R.E 2002] as amended by Act No. 3 of 2016*

PARTICULARS OF OFFENCE

JUMA RIFDHIWANI MOHAMED and FRANK BENEDICT LEMAN, on the 29th day of September, 2019 at Kigogo area within Ubungo District in Dar es salaam Region, was found in possession of Narcotic Drugs Namely Cannabis Sativa commonly known as "bhangi" weighing 108.41 kilograms.

Dated at Dar es salaam this 1st day of November, 2019

Sgd:

STATE ATTORNEY

As it can be noted that the charge referred above was preferred under the Drugs Control and Enforcement Act, No. 5 of 2015 (DCEA) read together with paragraph 23 of the first schedule to Economic and Organised Crime Control Act, [Cap. 200 R.E 2002] (EOCA). As to what law should apply for the purposes of bail in this application, I am of the firm view that the applicable laws in this matter are EOCA and DCEA for having specific provisions for bail consideration on drug offences and not the Criminal Procedure Act, [Cap. 20 R.E 2002] which has general provisions. Having so stated I now turn to consider the applicants' prayers for grant of bail. The applicants have submitted that the offence

facing them is bailable and that this court has jurisdiction to entertain their application as they have reliable sureties and are ready to comply with the bail conditions set by the court. The respondent through Mr. Tesha learned Senior State Attorney is challenging this court's jurisdiction to grant bail to the applicants as section 29(1)(b) of the Drug Control and Enforcement Act, No. 5 of 2015 restricts bail provision to any person charged with an offence of trafficking of cannabis weighing more than (20) twenty kilograms. He therefore urged this court to dismiss the application for want of merit.

I am in agreement with Mr. Tesha that the provisions of section 29(1)(b) of the DCEA restricts the grant of bail to any person who is charged with the offence of trafficking of cannabis weighing more than (20) twenty kilograms. The restrictions on grant of bail basing on weight above (20) twenty kilograms of cannabis was imposed following amendment of the said law in the Drug Control and Enforcement (Amendment) Act, No. 15 of 2017. The section reads:

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) NA.

(b) that accused is charged of an offence involving trafficking of cannabis, khat and any other prohibited plant weighing twenty kilogram or more; (emphasis supplied).

In this application as per the charge sheet referred above the applicants were found in possession of 108.41 kilograms of cannabis far above the weight of 20 kilograms allowed by the law for the grant of bail. It follows therefore that this court has no jurisdiction to grant bail to the applicant as requested. The same is the case where the accused person is facing a charge of trafficking of khat and any other prohibited plant weighing (20) twenty kilograms or more. For the purposes of clarity the restriction of bail under section 29 of the DCEA applies to all drug cases be it economic crime cases tried by the Court or cases under normal criminal jurisdiction of the subordinate court so long as the weight or volume of the drug or chemical in which the suspect/accused person has been trafficking or found in possession of exceeds the prescribed one under section 29(1)(a),(b) and (c) of DCEA or where a person is charged under the provisions of sections 16, 20 and 23 of the said Act.

Apart from section 29 of the DCEA, section 36(4)(f) of EOCA also closes doors of bail to any person charged with an offence under the *Drug Control and Enforcement Act*. This position came as a result of the Written Laws (Miscellaneous amendment) Act, No. 3 of 2016 that amended EOCA. The section reads:

36(4) The Court shall not admit any person to bail if;

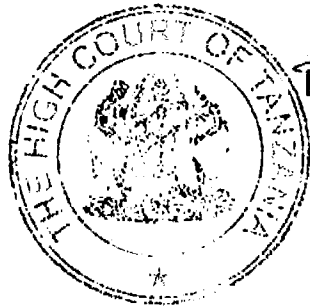
- (a) Na.*
- (b) NA.*
- (c) NA.*
- (d) NA.*
- (e) Na.*
- (f) **if he is charged with an offence under the Drugs Control and Enforcement Act.** (emphasis supplied)*

Under the above cited provision, I am of the considered opinion that once a charge is preferred against any person under the *Drugs Control and Enforcement Act* then this court ceases to have jurisdiction to entertain bail application. As stated earlier the applicants in this application are facing charges under Drugs Control and Enforcement Act read together with paragraph 23 of the first schedule to EOCA. It follows therefore that the applicants apart from the restrictions of bail imposed by S. 29(1)(b) of the *Drugs Control and Enforcement Act, No. 5 of 2015* they are also prevented from being granted bail under section 36(4)(f) of EOCA. The issue is therefore answered in negative.

In the circumstances and for the foregoing reasons, I am inclined to find that this application is devoid of merits and is hereby dismissed in its entirety.

It is so ordered.

DATED at DAR ES SALAAM this 23th day of March, 2020.



E. E. Kakolaki

JUDGE

23/03/2020

Delivered at Dar es Salaam today on 23rd day of March, 2020 in the presence of the 1st and 2nd Applicants and **Mr. Genes Tesha** learned Senior State Attorney for the respondent.

E. E. Kakolaki

JUDGE

23/03/2020