

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

MISC. CRIMINAL APPLICATION NO. 34 OF 2021

BENJAMINI KASWAKA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

***(Application for bail pending trial arising from Economic Case No. 4
of 2021 of the District Court of Bunda at Bunda)***

RULING

03rd and 3rd August, 2021

KISANYA, J.:

This ruling decides the issue whether the present application for bail pending trial is competent before the Court. The application has been preferred under Article 13 (6) (b) and 15 of the Constitution of the United Republic of Tanzania of 1977 (as amended from time to time) and section 29 (4) (d) and 36 (1) of the Economic and Organized Crime Control Act [Cap. 200, R.E. 2019] (the EOCCA).

In terms of the supporting affidavit and the charge appended thereto, the case subject to this application is pending before the District Court of Bunda at Bunda. The offence laid against the applicant is of trafficking of narcotic drugs contrary to section 15 (1) (a) of the Drug Control and Enforcement Act

[Cap. 95, R.E., 2019] (the DCEA) read together with Paragraph 23 of the First Schedule and Section 57 (1) and 60 (2) of the EOCCA. It is alleged in the particulars of offence that on 12th February, 2021, at Balili area within Bunda District in Mara Region, the applicant, Benjamin Kaswaka was found trafficking 117.96 kilograms of narcotic drugs commonly known as khat (*mirungi*) by using a motor vehicle with registration number T. 931 DML, Make: Toyota Succeed.

When the matter was called on for hearing the applicant appeared in person while Mr. Tawabu Yahya, learned State Attorney appeared for the respondent.

At the outset, Mr. Tawabu raised a preliminary objection on point of law that the application was incompetent because the offence subject to this case is unbailable. Making reference to section 29(1)(b) of the DCEA, the learned counsel argued that this Court has no mandate to admit the applicant to bail because in terms of the charge, he was found trafficking 117. 96 kilograms of khat.

The applicant conceded that the offence levelled against him involve trafficking 117.96 kilograms of khat. However, he urged me to admit him on bail due to his health condition. He contended that he wanted to seek medical treatment.

After a careful consideration of submissions of the parties, the issue for determination whether this application is competent before the Court or whether this Court has jurisdiction to admit the applicant to bail pending trial.

Before discussing that issue, I wish to point out that I am alive to trite law that an accused person is entitled to bail pending to his trial. However, the right to bail is not absolute. It is considered and determined in accordance with the law of this country. Therefore, an application for bail pending trial, cannot be granted if the respective offence is not bailable.

As indicated herein, the offence subject to this application is trafficking of narcotic drugs. Pursuant to section 29 (1) (b) of the DCEA, the court is barred from admitting the accused to bail if the offence involves trafficking of cannabis, khat and any other prohibited plant weighing twenty kilogram or more. The said 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) N/A

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

In our case, the parties are not at issue that the applicant was found in trafficking 117.96 kilograms of narcotic drugs commonly known as Khat (*mirungi*). Therefore, the offence levelled against the applicant is unbailable

because the weight of narcotic drugs involved is over and above the threshold which the Court is mandated to grant bail pending trial. It follows that the application is incompetent before the Court. In other words, this Court has no jurisdiction to determine the present application.

In the light of the foregoing, I uphold the preliminary objection. Consequently, the application is hereby struck out for being incompetent.

DATED at MUSOMA this 3rd day of August, 2021.





E. S. Kisanya
JUDGE

COURT: Ruling delivered through teleconference this 3rd day of August, 2021, in appearance of the applicant in person and Mr. Tawabu Yahya, learned State Attorney for the respondent.

Right of appeal to the Court of Appeal is well explained.




E. S. Kisanya
JUDGE
03.08.2021