

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC.CRIMINAL APPLICATION NO. 35 OF 2020

(Originating from Economic Crimes Case No. 11 of 2018 in the District
Court of Masasi)

NURUDIN AMIRI MTEMBO.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

9 Aug. & 4 October, 2021.

DYANSOBERA, J.:

In the instant application, Nurudini Amiri Mtembo is seeking admission to bail pending the determination of the Economic Criminal Case No. 11 of 2018 before the District Court of Masasi.

The application has been preferred by way of chamber summons under the provisions of Sections 29 (4) (d) and 36 (1) of the Economic and Organised Crimes Control Act [Cap.200 R.E. 2002] as amended by

Act No. 3 of 2016 and section 148 (1) and (2) of the Criminal Procedure Act. [Cap.20 R.E. 2002]. It is supported by the affidavit of the applicant but resisted by the respondent who has filed a counter affidavit.

At the hearing of this application, the applicant appeared in person whereas the respondent was represented by the learned Senior State Attorney, Mr. Willbroad Ndunguru.

Arguing in support of the application, the applicant submitted that he is applying for bail after he was charged under Act No. 5 of 2015 and has stayed in prison from 2018. He argues that he has the right to be granted bail.

Mr. Ndunguru, opposing the grant of bail, submitted that the law the applicant is referring to has been amended. He contends that principally, what prevents the applicant from being admitted to bail is the amount the applicant is alleged to have been in possession as per the charge sheet. He explained that according Act No. 15 of 2017 which amended section 29 of the Drugs Control and Enforcement Act, where the subject of the charge weighs more than 20 kilogrammes, the court is barred from admitting the accused to bail.

The applicant had nothing to re-join.

The main issue calling for determination by this court is whether or not the applicant should be admitted to bail. While the applicant argues that he has the right to be admitted to bail, the respondent, on the other hand, contends that in view of the amendment effected by Act No. 15 of 2017 which amended section 29 of Cap. 95, the applicant cannot be admitted to bail.

The provisions pertinent to the issue on hand provides as hereunder:-

'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,

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 two hundred grammes or more;

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

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

(2) Where there is any inconsistency in matters relating to weight, type of chemical concerned or any other matter of similar nature provided in this section, the weight, type of chemical or that other matter determined by the Government Chemist shall prevail.

(3) The conditions on granting bail specified in section 148 of the Criminal Procedure Act, shall *mutatis mutandis* apply to all bailable offences under this Act.

However, as rightly submitted by the learned Senior State Attorney, Mr. Wilbroad Ndunguru, section 29 (1) (b) (supra) was amended by Section 13 of the Drug Control and Enforcement (Amendment) Act, No. 15 of 2017 by:-

(ii) deleting the words "one hundred" appearing in paragraph (b) and substituting for them the word "twenty".

In the instant case, there is no dispute and the record is clear that applicant is charged of an offence involving trafficking of cannabis

weighing one hundred and sixty three (163) kilograms which twenty or more kilograms.

For that reason, this court is barred from admitting the applicant to bail.

The application for grant of bail is declined.

Order accordingly.




W.P. Dyansobera

Judge

4.10.2021

This ruling is given at Mtwara under my hand and the seal of this Court on this 4th day of October, 2021 in the presence of Mr. Wilbroad Ndunguru, learned Senior State Attorney for the respondent and in the presence of the applicant in person.




W. P. Dyansobera

Judge