

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CRIMINAL APPLICATION NO. 240 OF 2021

(Originating from Economic Crime Case No. 56 of 2021)

ALLY JUMA ALLY.....1ST APPLICANT

ABUBAKAR JUMA ABDALLAH.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

Date of last order: 10/11/2021

Date of Ruling: 16/11/2021

R U L I N G

MGONYA, J.

An application for bail has been filed before this Honourable Court on the grounds set forth in the Chamber Summons as reflected below:

1. That, the Honourable Court may be pleased to grant bail to the Applicants pending hearing and determination of their Economic Crime Case No. 56 of 2021 pending at Kisutu Resident Magistrate Court.

2. That, the Honourable Court may be pleased to grant bail pending Economic Crime Case No. 56 of 2021 and declare reasonable bail conditions; and

3. Any other order(s) and relief that the Honourable Court deem fit to grant on the same matter.

The same is accompanied by a joint affidavit sworn by **Ally Juma Ally** and **Abubakar Juma Abdallah**. The Applicants in this matter are represented by **Mr. Kitwika Learned Counsel** and the Respondent is represented by **Ms. Maziku Senior State Attorney**. The Application was argued orally on the day the same was set for hearing.

Mr. Kitwika Counsel for the Applicants informed this Court that, the bail application is brought under **section 29 (4) of The Economic and Organized Crime Control Act, Cap 200 [R. E. 2019]**. It was his submission that the Applicants under the provisions of **section 29(1) (c) of the Drug Control and Enforcement Act Cap. 95 [R. E. 2019] (hence forth the Act)** are eligible for bail, hence the application at hand.

Further, the Applicant's Counsel reiterated that it is their concern that the weight of the substance which is **Methamphetamine** of which the Applicants are charged with in trafficking do not exceed 30kg in weight as stated in the law,

as per section **29(1) (c)** the Applicants were found with the substance weighing **597.61 grams** hence making them eligible to be released on bail.

Moreover, Mr. Kitwika Learned Counsel, averred that, the drug **Methamphetamine** is nowhere mentioned in the Schedules to the Law under the **Drug Control and Enforcement Act (supra)**. He further claims that the same has been in the 1st Schedule in the list of substances of the Act of which it falls under the substances and not in the drugs list.

In reply to the application Ms. Maziku Senior State Attorney objected to the application stating that **section 29 (1) (c)** is not applicable to the matter at hand and instead the relevant section is **Section 29(1)(a)** of the Act, Cap. 95 as the substances falls under **any other** substances apart from the mentioned ones.

Further, Ms. Maziku informed this Court that the substance in issue has been identified on the First Schedule and in the list of Substances in 2nd list of the Act. However, under **section 29 (1) (a)** appears a list of substances which are combined substances of which **Methamphetamine** is amongst the substances. It is from the above she states to object the application to be relied under **section 29 (1) (c)** for this section does not fall in favour of the Applicants.

Having gone through the rival submissions of the parties herein the same is determined as hereunder.

The application before me is an application that falls under rights of a person as enshrined in **the Constitution of the United Republic of Tanzania [1977] as amended** from time to time. The Applicant's application is in search of their freedom that has been curtailed from them with regards to the offence they are charged with. On the other hand, the Respondent objects the application basing her argument on the provision of the law that the same are unobtainable.

It is in the records before this Court that the accused are charged of the offence of Trafficking in Psychotropic substance which is **Methamphetamine** contrary to **section 15 (1) (a) of the Drug Control and Enforcement Act Cap. 95 [R.E. 2019]**. The records further reveal that the same weighs **597.61 grams**.

Having carefully gone through the Act, I find that the said substance above has been listed in **the First Schedule of the Drug Control and Enforcement Act (supra)** under **Schedules on Psychotropic Substances of 1971, as at 13 November 2016 of the Convention list of substances in schedule II**.

It is then from the above that **Methamphetamine** falls under the class of a **psychotropic substances** of which

under **section 2 of the Drug Control and Enforcement Act (supra)** is defined as:

"any substance, natural or synthetic, or any natural material included in a list of psychotropic substances specified in the First Schedule to this Act."

Therefore, since **Methamphetamine** is a **manufactured** substance and being listed in the **Psychotropic Substances** then falls under **section 29(1)(a) of the Drug Control and Enforcement Act** and the same weighing **597.61 grams** far away of 20 grams from that provision makes the Applicants ineligible for bail with regards to the provisions of **section 29 (1) (a)** of the Act named above. For ease of reference the same is reproduced as follows:

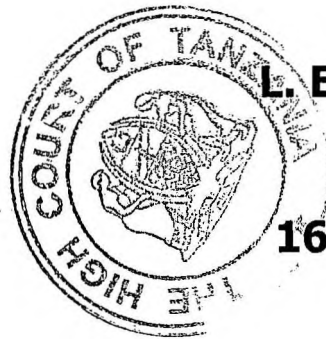
"29 (1) A police officer in charge of a police station or an officer of the Authority or a Court before which an accused is brought or appear shall not admit the accused person to bail if:

(a) that accused is charged of an offence involving trafficking of Amphetamine Type Stimulant (ATS), heroin, cocaine, mandrax, morphine, ecstasy, cannabis resin, prepared opium and any other

manufactured drug weighing twenty grammes or more”.

In the event therefore this Court finds **the Application herein meritless for being misconceived and is hereby dismissed it entirety.**

It is so ordered.




L. E. MGONYA

JUDGE

16/11/2021

Court: Ruling delivered in chamber in the presence of Mr. Fredrick Kitwika, Advocate for the Applicants, Ms. Kasana Maziku, SSA for the Respondent and Ms. Veronica RMA.




L. E. MGONYA

JUDGE

16/11/2021