

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SONGEA DISTRICT REGISTRY)**

AT SONGEA

MISC. CRIMINAL APPLICATION NO 14 OF 2022

(Originating from Economic Case No. 11 of 2020 before Songea District Court at Songea)

JAMALI KARIM MBALIKA.....1ST APPLICANT

PETER ALPHONCE MANDE.....2ND APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of last Order: 08/07/2022

Date of Ruling: 08/07/2022

MLYAMBINA, J.

The Applicants are essentially seeking for bail on *Economic Case No. 11 of 2020* allegedly pending before the Songea District Court at Songea. The application was made by way of Chamber Summons under the provisions of *section 29 (4) (d) and 36 (1) of the Economic and Organized Crime Control Act [Cap 200 R.E. 2019]* and supported with the affidavit of Jamali Karim Mbalika (1st Applicant) and Peter Alphonse Mande (2nd Applicant).

At the hearing, the 1st Applicant told the Court that he has been charged for trafficking narcotic drugs commonly known as Cannabis Sativa weighing

Fourty Four point Five, Four (44.54) kilograms from Namatuhi Village in Songea District to Songea Town using Motor Cycle with Registration Number MC. 370 BWH Make HAOJUE. The 2nd Applicant on his part told the Court that he has been charged for trafficking narcotic drugs commonly known as Cannabis Sativa weighing Fifty-Two point Four, Six (52.46) kilograms from Namatuhi Village in Songea District to Songea Town using Motor Cycle with Registration Number MC. 551 CKD Make HAOJUE.

It was the submission of both Applicants that the charged offence is bailable and the District Court of Songea at Songea has jurisdiction to try the charged offence. The 2nd Applicant on his part told the Court that the value of the alleged trafficked narcotic drugs has not been stated for them to know if the District Court has jurisdiction or not.

In response, learned Senior State Attorney Tumaini Ngiruka objected the application on the ground that *Economic Case No. 11 of 2020* is not in existence.

According to Ms. Tumaini Ngiruka, the Republic filed an information before the High Court in which both Accused Persons are being charged of trafficking Narcotic Drugs commonly known as Bhangi weighing Ninety

Seven (97) Kilograms from Mozambique to Songea Town using Motor Cycle with Registration Number MC. 370 BWH Make HAOJUE and Motor Cycle with Registration Number MC. 551 CKD Make HAOJUE.

Further, it was submitted by Ms. Tumaini that the Applicants are being charged through *Economic Case No. 2 of 2022 before the High Court of Tanzania at Songea*.

Based on the provisions of section 29 (1) (b) of the *Drugs Control and Enforcement Act, Cap 95 as amended in 2019*, Ms. Tumaini told the Court that the offence of which the Applicants are charged with is not bailable.

In rejoinder, the Applicants had nothing substantial to state.

I have had an opportunity to go through the application, the supporting affidavits, the records of *Economic Case No. 2 of 2022* before this Court and the oral submissions of both parties. I understand that Bail is a constitutional right. Its denial will be contravening the *Constitution of the United Republic of Tanzania of 1977 as amended from time to time. Article 13 (6) (b) of the Constitution (supra)* states:

“No person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence;”

It follows, therefore, that bail is the legal right of the Applicants as per *the Constitution of the United Republic of Tanzania (supra)*. Indeed, failure to grant Bail to the Applicants will contravene *Article 15(1) (2) of the Constitution (supra)* which provides:

“(1) Every person has the right to freedom and to live as a free person.

(2) For the purposes of preserving individual freedom and the right to live as a free person, no person shall be arrested, imprisoned, confined, detained, deported or otherwise be deprived of his freedom save only-

(a) under circumstances and in accordance with procedures prescribed by law; or”

However, the Applicants are charged for the offence of trafficking Narcotic Drugs commonly known as Bhangi contrary to *section 15 of the Drugs Enforcement and Control Act No. 5 of 2015. The Act No. 5 of 2015 (supra)* became operational on 8th of July 2016. Under *section 29 (1) (b) of the Drugs Control and Enforcement Act, Cap 95 as amended in 2019*, the offence of

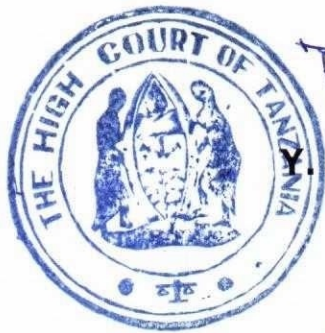
trafficking Bhang exceeding 20kgs which the Applicants are charged with is not bailable. *Section 29 (1) (b) (supra)* provides:

“A Police Officer In-charge of Police Station or an Officer of Authority or a Court before which an Accused is brought or appear shall not admit an Accused Person to bail if:

- (a) That Accused Person is charged of an offence involving trafficking of cannabis and any other prohibited plant weighing 20 kilograms or more.”

The Applicants in this application do not dispute to have been charged for trafficking Narcotic Drugs commonly known as Bhangi weighing 97 kilograms. As such, it would be mischievous to grant bail to the Applicants while blatantly ignoring the clear provision of the law that bars this Court to grant bail to whoever trafficking more than 20 kilograms of Narcotic Drugs.

In the end, the application is hereby marked dismissed on ground that the offence of which the Applicants are charged with is unbailable. It is so ordered.

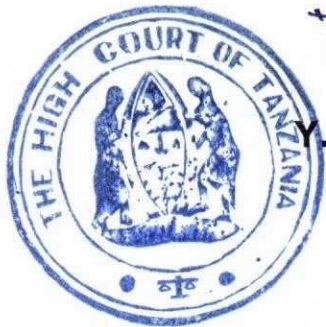


Y. J. MLYAMBINA

JUDGE

08/07/2022

Ruling delivered and dated this 8th day of July, 2022 in the presence of the Applicants and learned Senior State Attorney Tumaini Ngiruka for the Respondent.



Y. J. MLYAMBINA

JUDGE

08/07/2022