

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)**

AT MTWARA

MISC. CRIMINAL APPLICATION NO.27 OF 2022

*(Originating from Economic Case No 2/2022 of Masasi District Court at
Masasi)*

MOHAMED SELEMANI MOHAMED AND 8 OTHERS APPLICANTS

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Muruke, J

The two applicants are facing economic case number 2/2022 at District court of Masasi at Masasi. They are being charged for unlawfully possession of Narcotic Drugs. Applications is supported by an affidavit sworn by Hashim Mapunda. Respondent filed counter affidavit to object the grant of bail. On the date set for hearing, applicants requested court to adopt their affidavit as their submission in support of their application. Respondent counsel also requested for the same.

Having gone through affidavits in support the application, and counter affidavit, it is worth nothing that, charge sheet attached to the affidavit, specifically on particulars of offence, the two applicants were found in



unlawfully **possession of 27 Kilograms of cannabis** Sativa commonly known as Bhangi.

Issues determination is whether under the circumstance of this case, whether the offence is bailable. Respondent counsel opposed grant of bail as the same is curtailed by law, section 29 (1) (b) of the Drugs Control and Enforcement Act, Cap 95 R.E 2019 which provides that for one charged in drug trafficking with amount more than 20 kg the offence is unbailable referring this court to the case of **Mabula Dotto Sabasaba Vs. The Republic Misc. Criminal Application No 18 of 2019, High Court of Shinyanga (unreported)**

For clarity section 29 (1) (a) (b) is reproduced below: -

Section 29 (1) A police 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**, that and any other prohibited plant weighing twenty kilogram or more, and” The catch words in this section is **“trafficking”**

The term **“trafficking”** is defined by section 2 the same Act to mean

“The important, exportation, buying, sale, giving, supplying, storing, possession, production, manufacturing, conveyance, delivery or distraction, by any person of narcotic drug or psychotropic substance or making of any offer.....”



Therefore, by its definition the word **“trafficking”** includes **“possession”**. Under the cited section 29 (1) (b) above, the bail on offences involving trafficking which as stated, includes possession of narcotic drugs, is restricting where the drugs involved weight 27 kilograms and above. Applicants in this application is charged with unlawful possession of Narcotic drugs weighting 28 kilograms. Obvious, this fails under the restrictive in section 29 (1) (supra) and therefore not bailable. In the circumstances bail application is refused.




Z. G. Muruke

Judge

29/07/2022

Ruling delivered in the presence of Gedion Magesa State Attorney for the respondent and the applicants in persons.




Z. G. Muruke

Judge

29/07/2022