

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**MISC. CRIMINAL CAUSE/APPLICATION NO 38 OF 2022**

**IN THE MATTER OF AN APPLICATION FOR**

***BAIL PENDING DISPOSAL OF CRIMINAL CASE NO 90 OF 2022***

(Arising from Criminal Case No 90 of 2022 in the District Court of Musoma)

**NYAKISIRYA S/O MUGOYA ..... APPLICANT**

***VERSUS***

**REPUBLIC ..... RESPONDENT**

**RULING**

26<sup>th</sup> August & 26<sup>th</sup> August, 2022

**F. H. MAHIMBALI, J.**

The applicant in this case stands charged at Musoma District Court with one Criminal Case of trafficking narcotic drugs contrary to section 15 A (1) and (2) (c) of the Drug Control and Enforcement Act, Cap 95 R. E. 2022.

He is charged that on the 22<sup>nd</sup> day of June 2022 at Buruma village within Butiama District in Mara Region was found in possession of 32.3. kg of Cannabis Sativa commonly known as bhang. He now seeks bail to this court pending trial. The application is filed under section 148 (3) of the Criminal Procedure Act Cap 20 R. E. 2022, read together with

section 29 (1) (b) and (2) of the Drug Control and Enforcement Act, Cap 95 R. E. 2022.

It has been the concern of Mr. Amos Wilson, learned advocate that though section 29 (1) b of DCEA, Cap 95 R. E. 2022 makes prohibition of grant of bail to accused person charged with trafficking narcotic drugs weighing 20 kg and above, in the current case there is no evidence that what is being charged is either bhanghi and or is weighed 20 kg and above. In the circumstances, he prayed that this court under section 29 (2) of DCEA to consider it as an inconsistency and that I should direct the trial court to admit the applicant to bail. The application has been strongly resisted by the respondent on the legal aspect that all these issues raised are matters of evidence which are the subject of the case itself. Evidence of it will be tendered during trial if what is alleged to be narcotic drug is really bhanghi and that it is weighed above 20 kg.

I have digested the concern of Mr. Wilson learned advocate. I agree that section 29 (2) of the DCEA, comes into play during bail applications. This is because the whole of section 29 deals with unbailable offences. I also agree with Mr. Wilson that for trafficking offences to be unbailable, there must be two things. That the substance being charged with is narcotic drugs and that it weighs 20kg and above (if bhanghi), or 20 gm if the offence involves Amphetamine Type

Stimulate (ATS), heroin, cocaine, Mandrax, Morphine, ecstasy, Cannabis resin, prepared opium and any other manufactured drug etc weighing twenty grams or more. Others are Precursor chemicals or other substances in the process of manufacturing drugs, thirty litres in liquid form or thirty Kg in solid form or a person is charged under the provisions of section 10, 20 or 23 of the DCEA.

However, if there is any inconsistency in matters relating to weight, type of chemical concerned or any other matter of similar nature, the weight, type of chemical or other matters the determination by the Government Analyst shall prevail.

In the current matter, I have just seen charge sheet of Criminal case No 91 of 2022. It reads. **"Nyakisirya S/O Mugoya, on 22<sup>nd</sup> day of June, 2022 at Buruma area within Butiama District in Mara Region, was found trafficking 37.8 Kilograms of Narcotic Drugs commonly known as cannabis (bhanghi)"** As per law, (section 29 (1) b of Cap 95) this offence is unlawful.

The argument of Mr. Wilson is this, there is no proof that the charged substance is really bhanghi and if so, if it weighs 32.3.Kg. The respondent argues that this is the substance of the case itself. All this will be established during trial of the case.

I beg to differ with the Republic (respondent) that as per section 29 (2) of Cap 95, the said proof being referred caters for matters during bail consideration and not during trial. However, for the argument of Mr. Wilson to hold water, there would be established evidence (at this stage) that what is alleged to be bhangi/chemical substance is not actually bhangi but something else or that it is not weighed at 32.2.Kg as alleged. Then the applicability of section 29 (2) of Cap 95 would come into play for the Government Analyst to cast doubt.

As things stand, there is no any inconsistency established by the applicant against the respondent's charge in which the Government Analyst intervened or that would intervene. He is thus charged to establish it first for this application to be meaningful.

That said, this application is of no merit. As this court (at this stage) cannot go beyond what is alleged to exist in the charge sheet unless the said inconsistency is first established.

Application is struck out for being incompetent before the court.

DATED at MUSOMA this 26<sup>th</sup> day of August, 2022.



F. H. Mahimbali  
Judge

**Court:** Ruling delivered thin 26<sup>th</sup> day of August, 2022 in the presence of the Mr. Amos Wilson, advocate for the applicant, Ms. Monica Hokololo, SSA for the respondent and Mr. Gidion Mugo, RMA.



F. H. Mahimbali

Judge