

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC ECONOMIC/CRIMINAL APPLICATION No. 42 OF 2022

(C/F The District court of Longido at Longido at Longido in Economic Case No. 08/2020)

SHADRACK JAFET MOLLEL.....APPLICANT

VERSUS

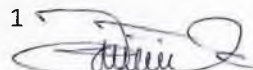
THE DPP.....RESPONDENT

RULING

30th August & 27th September 2022

TIGANGA, J.

In this application, the applicant herein applies for bail pending trial in Economic Case No. 08 of 2020 and other reliefs which this Honourable court deems fit and just to grant. He moved this court through chamber summons and an affidavit under section 149 of the Criminal Procedure Act, [cap20 R.E 2019], section 29(4) and section 36(1) of the Economic and Organized Criminal Control Act, [cap 200 R.E 2019] read together with section 10 of the Written laws (Misc. Amendments), Act No. 03 of 2016 and any other enabling provision of the law.

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The background facts of this application is that, the applicant stands charged with an offence of unlawful trafficking of narcotic drugs contrary to section 15(2) of the Drugs Control and Enforcement Act No. 15 of 2015 read together with paragraph 23 of the 1st schedule to the Economic and organized control Act [Cap 200 R.E 2019] and the type of the said narcotic drugs id Cathe Edulis commonly known as Mirungi, and the quantity of the drugs id 69.60Kg as stipulated in the charge sheet. He was so charged in Economic Case No. 08 of 2020 which is pending before the District Court of Longido at Longido.

The application was opposed by the respondent, Republic who appeared through Ms. Akisa Mhando, learned SSA. The hearing of the application was conducted orally. the applicant fended for himself unrepresented, while the respondent Republic was represented by the Ms. Akisa Mhando, learned SSA. In support of the application, the applicant submitted that, he has been in remand prison for a long time without his case being heard and the whole family depends on him. He further submitted that, he has applied for the bail so that he can be out on bail up to when his case will be heard. He further submitted that, the other reason is that, he

has health problems particularly a urinary bladder and liver problem, therefore he asks to be given bail pending trial of his case.

In reply submissions made in opposition of the application, Ms. Akisa Mhando submitted that, the reasons given by the applicant for consideration of bail is failure to complete investigation in time and the health problem he has. However, under section 29(1), (b) of the Drugs Control and Enforcement Act, (supra) incapacitates this court to grant bail where the quantity of the drugs in question exceeds 20 kgs.

According to the charge sheet the applicant was arrested with 69.90 kgs which is far beyond the 20 kgs of the drugs which the maximum quantity for which this court can grant bail, she said. Basing on that legal position, it is her view that, the application has no legal justification. Called upon to rejoin, the applicant said, he had nothing to add.

Now, from the application and the submission made by the parties, the issue for consideration is whether this application is meritorious

Looking the submissions, it is true as submitted by the counsel by the respondent that looking at the arguments in support of the application, the applicant does not seem to argue that he is under any law entitled to the

bail. He basis the application on the delay of completion of investigation and his ill health. The respondent on the other hand, argues that this court under section 29(1) (b) of the Drugs Control and Enforcement Act, (supra) has no jurisdiction to grant bail if the quantity of the drugs for which the accused stands charged exceeds 20 kg. In essence she was reminding this court that it has no jurisdiction to grant bail. Now, in determining whether this court has jurisdiction or not, I would like to be guided by the provision of section **29(1) of the Drugs Control and Enforcement Act**, [Cap 95 R.E 2019] which provides 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***

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

In line with the above principles, I find it established that, since the quantity of the drugs involved is 69.60 kg far beyond the maximum quantity of below 20kg then this court has no jurisdiction to grant bail.

It should be noted that, jurisdiction of the court is statutorily conferred. Where the law has expressly provided the jurisdictional limit of the court, it will be illegal for that court whose jurisdiction has been limited by the law, to exceed the maximum limit of the jurisdiction so conferred. In the upshot, this application for bail fail because the quantity of drugs which the accused person was found with exceeds the maximum limit. That said, the application is hereby dismissed for being incompetent.

It is accordingly ordered.

DATED at **ARUSHA** on the 27th day of September 2022.

 *J.C. Tiganga*
J.C. TIGANGA
JUDGE.