

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

**AT DAR ES SALAAM**

**MISC CRIMINAL APPLICATION NO. 72 OF 2022**

*(Originating from Economic Case No. 93 of 2020 in the Resident Magistrate Court  
of Dar es salaam at Kisutu)*

**TAQABBAL AYOUB MWASHA.....APPLICANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

*Date of last Order: 03/10/2022*

*Date of Ruling: 10/10/2022*

**R U L I N G**

**MGONYA, J.**

The instant Application has been filed by **TAQABBAL AYOUB MWASHA** who is standing charged with **Economic Case No. 93 of 2020** before the Kisutu Resident Magistrates' Court. The same is made under **Sections 148 (1) (2) (5) (a) (II)** and **392A (1) (2) of the Criminal Procedure Act, Cap. 20 [R. E. 2019]** and **Section 29 (3) of the Drug Control and Enforcement Act, Cap. 95 [R. E. 2019]** seeking from this honorable court for the orders as herein below:

***1. That, this Honourable Court be pleased to  
grant the bail to the Applicant;***

***2. That, this Honourable Court be pleased to admit the Applicant herein to the bail; and***  
***3. That, this Honourable Court be pleased to grant any other reliefs and order as it may deem fit and just to grant.***

The Chamber Summons is brought at the instance of the Applicant and it is supported by the Affidavit affirmed by the Applicant. The Applicant's prayers were strongly disputed with the Respondent through the Counter Affidavit sworn by Dhamiri Masinde, the learned State Attorney representing the Republic.

Hearing of the Application proceeded by way of written submissions. Submitting in support of the Application the Applicant stated that, the offence he stands charged is bailable. No any barrier restricting him from being admitted to bail. Further that the bail is his Constitutional as well as fundamental right. Again, he has reliable sureties who are willing and capable of complying with the bail condition. He went further to state that the Prosecution side did not attach the monetary value which could have been applicable in determination of the proper court for the Applicant to seek the bail relief.

In reply, the Respondent while admitting that bail is a constitutional right, the Applicant is said to faulted the grant of bail to the Application as the same will be contrary to **section**

**148 (5) (a) (iii) of the Criminal Procedure Act, Cap. 20 [R. E. 2019].** To support her stance, Ms Masinde cited the case of ***HAJI DAUDI MLOLUZI & OTHERS VS. REPUBLIC, Misc. Criminal Application No. 270 of 2021***, where it was submitted that, the prohibited plant namely Khat plant (Mirungi) **weighing 214.85 kg** weighing more than **20 kgs** is not subjected to bailable offences.

It is from the above submission the learned State Attorney prayed this court to dismiss the application as the same has no merit and no legs to stand.

Having keenly considered the contents of the Applicant's affidavit as well as his submission, the issue for determination by this court is whether the application has merit or not.

It is undisputed that freedom of movement, presumption of innocent as well as right to bail are Constitution Right to be enjoyed by every person in this country. However, such rights are not absolute as the same Constitution provides for the responsibilities to be undertaken by individuals in order to enjoy those rights. One among the responsibilities is the duty to observe and to abide the Constitution as well as the Laws of the Country. Therefore, due to public interests the law restricts right to bail/freedom in some of the offences; See section **148 (5)**

**(a) (i-vi) of the Criminal Procedure Act, Cap. 20 [R. E. 2019].**

In this application, the applicant is charged with the possession of prohibited plant namely **Khat plant** weighing **214.85 kgs** contrary to **Drug Control and Enforcement Act, Cap. 95 [R. E. 2019]**. The Act under section 29 (1) (b) restricts granting bail when the weight of the prohibited plant is **20 kgs or more**. For easy reference I find it useful to reproduce the said provision as hereunder:

***"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 kilograms or more"***

Having in mind the above position of the law, I do agree with the Applicant's claims that, the offence he is charged with is bailable but I disagree with him that he has a right to enjoy such right because the weight of the prohibited plant alleged to be in his possession is more than **20 kgs**, hence he is banned by the law to enjoy the right to be released on bail.

With the above findings, **I find no merit in this application and the same is hereby dismissed.**

It is so ordered.

Right of Appeal Explained



**L. E. MGONYA**

**JUDGE**

**10/10/2022**