

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

MISC. ECONOMIC APPLICATION NO. 28 OF 2022

BETWEEN

*(Arising from Economic Case No. 20 of 2021 in the Resident Magistrate's
Court of Musoma at Musoma)*

MAGESA MWITA MAISA APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

24th August and 21st September, 2022

A. A. MBAGWA, J.:

This is an application for bail pending trial. The applicant Magesa Mwita Maisa is arraigned before the Court of Resident Magistrate of Musoma at Musoma for the offence of trafficking in narcotic drugs contrary to section 15 (1) (a) and 3 (iii) of the Drug Control and Enforcement Act [CAP 95 R.E 2019].

The particulars of offence allege that on 15th day of February, 2021 at Wegero area within Butiama District in Mara Region, the applicant was found trafficking 1158.76 kilograms of narcotic drugs commonly known as cannabis (bhangi).

In this application the applicant prayed for bail pending trial. The application has been made by way of Chamber Summons preferred under Articles 13 (6) (b) and 15 of Constitution of the United Republic of

Tanzania (as amended from time to time), Sections 148 (3) and 148 (5) (a) (ii) and (iii) of the Criminal Procedure Act [Cap. 20 R.E 2002] and Section 29 (1) (a) and (b) of the Drug Control and Enforcement Act [CAP. 95 R.E 2019]. The application was supported by an affidavit sworn by the applicant.

At the hearing of this matter, the applicant appeared through teleconference connected from Musoma Prison and in addition, he had the services of Mr. Evance Njau, the learned advocate. On the other side, Mr. Nimrod Byamungu, learned State Attorney entered appearance for respondent.

In his submission, the applicant counsel adopted the applicant's affidavit and argued that every person is presumed innocent until when he is found guilty. He further argued that the applicant has not been yet found guilty of the offence charged.

Relying on Article 15 of the Constitution of United Republic of Tanzania and the case of **Hassan Othman Hassan vs Republic**, Criminal Appeal No. 193 of 2014, the counsel urged the court to grant the application.

Mr. Njau further added that there is no certificate to the effect that the drugs with which the applicant is charged are weighing at 1158.70 kilograms. Thus, the counsel submitted that there is no proof as to the

weight of drugs. He concluded that the applicant is sick and cannot attend clinic successfully.

On the other hand, Mr. Byamungu opposed the application and argued on a point of law that as per Section 29 (1) (b) of the Drug Control and Enforcement Act, the court is prohibited to grant bail to a person charged with cannabis exceeding twenty (20) kilograms. In other words, the offence is unbailable. Referring to the decision of this court in **Charles Chirato vs Republic**, Misc. Criminal Application No. 28 of 2021, Mr. Byamungu contended that the offence with which the applicant is charged is unbailable since the charge alleges that the drugs found with the applicant weigh 1158.76 kilograms i.e, more than 20 kilograms. He thus, prayed the court to dismiss the application.

In rejoinder, the applicant's counsel reiterated the submission in chief.

Having considered the submissions by both parties, the issue which I am called upon to determine is whether this Court has mandate to admit the applicant on bail pending the applicant's trial.

It is common cause that bail is among the basic and fundamental rights to any person. In the Constitution of the United Republic of Tanzania, the right is preserved under article 13 (6) which provides *inter alia* that, no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence. In the case of **Patel vs. R**,

[1971] HCD 391, Judge Biron held that an accused awaiting trial is of right entitled to bail as there is presumption of innocence until the contrary is proved.

I agree that bail is crucial right to which an accused person is entitled pending his trial. However, this right is not absolute. It is only be available if the offence charged is bailable.

It was Mr. Byamungu's contention that, the applicant cannot be admitted on bail because the offence is unbailable. This is pursuant to section 29 (1) (b) of the Drug Control and Enforcement Act (Supra). The said section reads:

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-

(a) N/A

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


Looking at the charge, the applicant was found in possession of 1158.76 kilograms of narcotic drugs commonly known as Cannabis (bhangji). That is above 19 kilograms limit provided by the law to have accused admitted

on bail. It therefore necessarily follows that the offence with which the accused stands charged is unailable.

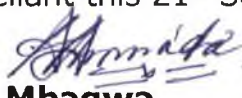
As to the applicant counsel's argument that there is no certificate to substantiate the alleged weight of drugs, it should be noted that there is no requirement of law to produce certificate of weight of drugs found in the possession of the accused person in granting bail. What is pleaded in the charge is deemed to be true. The Republic is therefore under no obligation to file an affidavit or certificate to prove weight during determination of bail. See **Simon Eliezer Jengo and 3 others vs. the Republic**, Misc. Economic Application No. 6 of 2009, HC at Dar es Salaam. Therefore, the weight of drugs indicated in the charge i.e, 1158.76 kilograms is prima facie authentic.

For the above reasons, I find the application meritless and consequently I dismiss it.




A. A. Mbagwa
JUDGE
21/09/2022

Court: The ruling has been delivered in the presence of Isihaka Ibrahimu (SA) for the Republic and the appellant this 21st September, 2022.


A. A. Mbagwa
JUDGE
21/09/2022