

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MOROGORO)
AT MOROGORO**

MISC. CRIMINAL APPLICATION NO. 08 OF 2022

(Arising from Economic Case No. 22 of 2021 pending in the Resident Magistrate Court of Morogoro)

ONECHENCE JOHN PETER @ MWARABU..... 1ST APPLICANT

ALEX SAMWEL @ KITALIMA 2ND APPLICANT

LADSLAUS JOSEPH MLAVULE @ SESEMBELE 3RD APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

Hearing date on: 21/3/2022

Ruling date on: 30/3/2022

NGWEMBE, J:

The applicants Onechence John Peter @ Mwarabu; Alex Samwel @ Kitalima; and Ladslaus Joseph Mlavule @ Sesembele are in this court seeking bail pending hearing of their criminal case which is pending at the Resident Magistrate Court of Morogoro at Morogoro. Their application was lodged in this court under certificate of urgency moving this court to grant them bail under section 36 (1) of the Economic and Organized Crime Act, section 29 (2) (3) and Drug Control and Enforcement Act Cap 95 R.E. 2019 and section 148 (3) (5) of the Criminal Procedure Act Cap 20 R.E. 2019.



The application is supported by affidavits of the applicants. Perusing on their affidavits, they attached a charge sheet which comprises four counts involving allegations of cultivating Narcotic Drugs to wit ten (10) acres of cannabis sativa; possession of seeds in production of drugs weight 51.40 kilograms; and three sacks weight 67.04 kilograms of cannabis sativa.

The application was objected by the Republic/respondent by filing counter affidavit sworn by learned State Attorney Tumain Maingu Mafuru. On the hearing date, the applicants did not procure representation of an advocate, thus had very little contribution to their application. They solely relied to their affidavits.

In turn the learned State Attorney, opposed this application by citing section 29 (1) (a) (b) of Drugs Control and Enforcement Act, which prohibit bail to whoever is charged for an offence involving drugs more than 20 gms or more is not bailable. Trafficking cannabis sativa weighting 20 Kg is not bailable. For better understanding, the section is quoted hereunder:

Section 29 (1) (b) *"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"

Based on this section alone, even if this court would find right to bail as natural rights preserved in our constitution, yet the law prohibit bail on a person or persons accused to unbailable offences. In this application, the

applicants are seeking bail against accusations of cultivating Narcotic Drugs to wit ten (10) acres of cannabis sativa; possession of seeds in production of drugs weight 51.40 kilograms; and three sacks weight 67.04 kilograms of cannabis sativa. Such huge quantities of drugs are not bailable.

Unfortunate may be to the applicants, that is the law, this court cannot refuse to apply the law in its decision making, even if such law is not the best one or goes contrary to the personal beliefs, yet so long it remains, the court will apply it.

Accordingly, I proceed to dismiss the application for bail and order the Republic try that accusations against the applicants soonest.

Order accordingly.



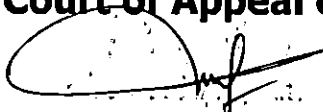
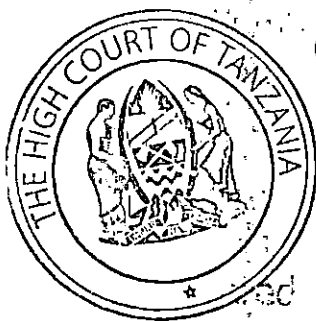
P.J. NGWEMBE

JUDGE

30/3/2022

Court: Ruling delivered at Morogoro in Chambers on this 30th day of March, 2022 in the presence of all applicants and Mr. Edgar Bantulaki learned State Attorney for the Republic/Respondent.

Right to appeal to the Court of Appeal explained.



P.J. NGWEMBE

JUDGE

30/3/2022