

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

THE CORRUPTION AND ECONOMIC CRIMES DIVISION

AT SHINYANGA SUB REGISTRY

**Misc. Economic Cause No. 04 Of 2018
(Originating from Economic Case No.94 of 2017
of District Court of Bariadi at Bariadi)**

TATU NELSON.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Date of last Order:- 15/5/2018

Date of Ruling:- 15/5/2018

F.N. Matogolo, J

Tatu Nelson, the applicant in this application along with Zaituni d/o John are arraigned in the district court of Bariadi at Bariadi charged with count of illicit trafficking in narcotic drugs. c/s 15 (1) (b) of the Drugs and Enforcement Act, No 5/2015 read together with paragraph 23 of the

first schedule to and section 57 (1) of the Economic and Organized Crime Control Act as amended by section 16 (b) of the Written Laws (*Miscellaneous Amendments*) Act, No 3 of 2016. It is alleged that the applicant was found unlawfully trafficking in narcotic drugs to wit; 3,440 grams of "mirungi".

The applicant has filed this application for bail, and is asking this Court to release her on bail pending trial of the case preferred against her.

The application is by chamber summons made Under Section 29 (1) (4) (d) and 36 (1) of the Economic and Organized Crimes Control Act, [Cap. 200 R.E 2002] and section 29 (3) of the Drugs Control and Enforcement Act, No. 5/2015 as amended by section 16(b) of the Written Laws (*Miscellaneous Amendments*), Act

The chamber summons is accompanied by an affidavit of the applicant.

The said chamber summons and an accompanying affidavit was served to the respondent who opted not to file counter affidavit. At the hearing, the applicant appeared in person, unrepresented. M/s Pendo Makondo learned Principal State Attorney appeared for the respondent/ Republic.

The applicant asked this court to grant her bail so that she will continue to attend to her case while out on bail. She said, she is a widow with dependants who depend on her. Her children and other orphans. That her health is not good, she is under regular treatment taking ARV. She also prayed for reasonable bail conditions in case this court grant her application.

On her part Pendo Makondo learned Principal State Attorney basically did not object the application because the charged offence is bailable. But the learned Principal State Attorney had only one observation in regard to the applicant's affidavit. She said the applicant in paragraph 4 she has cited provision of the law which is not permitted in affidavit. However she also suggested the remedy to that for the offending paragraph to be expunged, because she said even after that paragraph is so expunged the remaining paragraphs of the affidavit will serve the purpose. The applicant had nothing to rejoin.

Having heard the applicant as well as the learned Principal State Attorney on behalf of the respondent, and having gone through the chamber summons and an accompanying affidavit. First, I agree with the observation by the learned Principal State Attorney. That paragraphs 4 of the applicant's affidavit contains provision of law and legal argument. The principles on affidavit prohibit legal arguments in affidavits used in applications. So the same is to be expunged as suggested by the learned Principal State Attorney.

Paragraph 4 of the applicant's affidavit is hereby expunged. But this notwithstanding the expunged paragraph does not affect the validity of the affidavit. M/s PendoMakondo did not object bail. Provided that the charged offence is bailable one, and as there is no any objection to bail raised by the learned Principal State Attorney and as there is no any other fact availed to this court justifying denial of bail, I grant the application.

The applicant may be released on bail upon fulfilling the following conditions:-

- (i) The applicant shall execute a bond in the sum of Tshs, 10,000,000/=
- (ii) The applicant shall furnish two reliable sureties who will sign a bond of Tshs5,000,000/= each, one of the sureties must be resident of Simiyu or Shinyanga Regions within jurisdiction of this court.
- (iii) The applicant has to make sure that she will continue to attend to her case up to its finalization
- (iv) The Resident Magistrate incharge of Bariadi District Court or the Deputy Registrar of Shinyanga High Court shall approve the sureties and all bail documents before the applicant is released on bail.

Ordered accordingly.

F.N. Matogolo
F.N.MATOGOLO
JUDGE
15/5/2018

COURT

Ruling delivered.



F.N. Matogolo
F.N. MATOGOLO
JUDGE
15/5/2018