

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
THE CORRUPTION AND ECONOMIC CRIMES DIVISION  
AT DODOMA SUB REGISTRY**

**MISC. ECONOMIC CAUSE NO. 07 OF 2017**

(Originating from Singida District Court at Singida in  
Preliminary Inquiry Economic Case No. 11 of 2017)

**HASSAN s/o JUMA ..... APPLICANT**

VERSUS

**THE REPUBLIC ..... RESPONDENT**

Date of Last Order: - 09/10/2017

Date of Ruling: - 17/11/2017

**RULING**

**F. N. MATOGOLO, J.**

The applicant Hassan Juma and another Abubakary s/o Nicolausi (1<sup>st</sup> and 2<sup>nd</sup> accused persons respectively) are arraigned in the District Court of Singida at Singida with a single count that is: unlawful possession of narcotic drugs contrary to sections 15(1)(a) & (2) of the Drugs Control and Enforcement Act No. 5 of 2015 read together with paragraph 23 of the first schedule to and sections 57(1) and 60(2) both of the Economic and Organized Crimes Control Act, [CAP. 200 R.E, 2002] as amended by sections 13(b), (2) & (4) and 16(a) of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016. It is alleged that; on 19/06/2016 at 02:10hrs at Majengo area in Majengo Ward, Mungumaji division within the District and Region of Singida, the two were found in unlawful possession of 43 rolls of narcotic drugs known as "bhangi" weighing 96 grams.

The applicant has filed this application for bail which is by chamber summons made under section 148(1) of the Criminal Procedure Act, [CAP. 20 R.E, 2002], section 29(1)(b) & (3) of the Drugs Control and Enforcement Act No. 5 of 2015 and section 36(1) of the Economic and Organized Crimes Control Act, [CAP. 200 R.E, 2002]. The chamber summons is supported by an affidavit taken by Mr. James Samwel Pallangyo, learned advocate for the applicant. The Respondent/Republic did not file Counter Affidavit for reason which was disclosed at the hearing.

At the hearing, the applicant was represented by Mr. James Samwel Pallangyo, learned advocate, while Ms. Magesa, learned State Attorney appeared for the respondent/Republic.

Arguing for the application, the applicant's learned advocate urged this court to admit the applicant to bail considering that the charged offence is bailable in terms of section 29(1)(b) of the Drugs and Control Enforcement Act and that the applicant is presumed innocent under article 13(6)(b) of the Constitution of the United Republic of Tanzania, [CAP. 2 R.E, 2002] until proved otherwise. Besides, the applicant has no previous criminal record or to have jumped bail after been granted bail. The applicant's counsel thus urged for the applicant to be granted bail under reasonable conditions and that he will comply with all the conditions to be prescribed by the Court.

In response, Ms. Magesa learned State Attorney initially submitted that the affidavit in support of the chamber summons is fatally defective because an affidavit is not supposed to be made under any provisions of

the law as held in the case of **D.T. Dobie**, full citation of it was not provided. Thus, Ms. Magesa learned State Attorney urged for the application to be struck out.

In rejoinder, the applicant's counsel submitted that; the raised objection was raised by surprise and that the applicant's counsel was not served with copy of the cited case law for reference as to whether it suits the application at hand. He urged this Court not to be unduly and or unnecessarily tied up with technicalities when dispensing justice per article 13 of the Constitution of the United Republic of Tanzania.

Having considered the application at hand and the respective submissions by the applicant's learned counsel and the learned State Attorney, the following are the deliberations of this Court in disposal.

First, the raised Preliminary Objection by the learned State Attorney not only that was raised by surprise thus not according the applicant's counsel opportunity to address Court with regard to its merits but also that the same is non-meritorious in law. What the affidavit comprises of is that it was made in support of the chamber summons which was made under the cited provisions of various laws. Nothing offensive can be said to have been reflected in the said affidavit. Furthermore, this Court regards such reference to be proper and even if that should be thought to be improper, the same is also baseless because it does not go into the roots of the matters considering that they are matters of form and not substantive. It is from the above that this Court overrules the raised preliminary objection.

With regard to merits of the application, as correctly submitted by the applicants' learned counsel, the charged offence is bailable in terms of Drugs Control and Enforcement Act, the Economic and Organized Crime Control Act as amended by the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016. Likewise, as this Court has not been availed reasons warranting refusal of bail to the applicant. The application is granted.

The applicant may be released on bail in terms of sections 29(1) (b) and (3) of the Drugs Control and Enforcement Act, section 36(1) of the Economic and Organized Crimes Control Act as amended by the Written Laws (Miscellaneous Amendments) Act No. 3/2016 and sections 148(6) & (7) of the Criminal Procedure Act upon fulfilling the following conditions:

1. The applicant shall execute bail bond in the sum of Tshs.1,000,000/=
2. The applicant must produce two (2) reliable sureties who should each separately execute a bond of Tshs. 1,000,000/=.
3. The applicant shall not leave Singida region without prior permission of the Resident Magistrate in charge of Singida Resident Magistrates' Court.
4. The applicant must surrender to Singida Central Police Station his passport and any other travelling document(s) he might be possessing.
5. The applicant must report to Singida Central Police Station every Monday of the first and third week of the month before 12:00hrs (noon).

6. The applicant shall appear before the Court on the specific time and dates as scheduled by the District Court of Singida at Singida as his trial stand pending.
7. The sureties produced by the applicant must be approved by the Resident Magistrate in charge of Singida Resident Magistrates' Court. By reliable sureties means, persons of good standing who may be in active public service or in a recognized private institution and must be residents of Singida Region.
8. The Resident Magistrate in charge of Singida Resident Magistrates' Court at Singida must ensure that all bail conditions are accordingly met and implemented before and after releasing the applicant on bail as above prescribed.

Order accordingly.



*F.N. Matogolo*  
**F.N. MATOGOLO**  
**JUDGE**  
**17/11/2017**