

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

**MISC. CRIMINAL APPLICATION NO. 18 OF 2019**

(Arising out of Economic Crimes Case No. 04/2019 from the District Court of Shinyanga  
at Shinyanga)

**MABULA DOTTO SABASABA .....APPLICANT**

**VERSUS**

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

**RULING**

*Date of the last Order: - 18<sup>th</sup> February, 2021*

*Date of the Ruling: -19<sup>th</sup> February, 2021*

**MKWIZU, J.:**

This is an application for bail consideration under sections 29 (4) (d), 36 (1) of Economic and Organized Crimes Control Act Cap 200 R.E. 2002, and section 392 A (2) of the Criminal Procedure Act (Cap 20 R E 2002) as amended by the Written Laws Misc. Amendments) Act, No. 3 of 2011. The application is supported by an affidavit sworn by the applicant on 19/3/2019.

The application was heard orally, applicant was in person, without legal representation while respondent /Republic had the services of Mr. Enosh

Gabriel Kigoryo, learned State Attorney. Applicant's submissions were short, understandably because he is a lay person without any legal assistance. On why he should be granted bail, applicant said, he is a person with a family to take care of.

On her part, Mr. Enosh opposed the application. His opposition was grounded on only one ground that the offence with which the appellant is charged is not bailable. He referred the court to section 29 (1) (b) Drugs Control Enforcement Act, Cap 95 which, he said bars a person found with drugs above 20 grams to from being granted bail. Mr. Enosh submitted that, in the 1<sup>st</sup> count, applicant was found in unlawful possession of narcotic Drugs weighting 84 kilograms C/s 15(2) of the Drugs Control and enforcement Act No 5 of 2015 read together with paragraph 23 of the 1<sup>st</sup> schedule to and section 57 (1) of the Economic and Organized crimes control Act (CAP 200 RE 2002) and therefore not bailable.

I have passionately considered the application and the parties' submissions.

Applicant stand charged with two offences as follows:

## **1<sup>ST</sup> COUNT**

### **STATEMENT OF OFFENCE**

#### ***BEING IN UNLAWFULL POSSESSION OF NARCOTIC DRUGS:***

*Contrary to sections 15(2) of the Drugs Control and Enforcement Act No 5 of 2015 as amended by Drugs Control and Enforcement (Amendments) Act No 15 of 2017, read together with paragraph 23 of the 1<sup>st</sup> schedule to and section 57 (1) of the Economic and Organized Crimes Control Act (CAP 200 RE 2002) as amended by the written Laws (miscellaneous amendments) Act No 3 of 2016.*

### **PARTICULARS OF THE OFFENCE**

***MABULA S/O DOTTO@ SABASABA*** on 26<sup>th</sup> day of January 2019 at Mwine area within Shinyanga Village in Shinyanga region, applicant was found in unlawful possession of Narcotic drugs, to wit Cannabis commonly known as Bhangi weighs 84 Kilogram.

## **2<sup>ND</sup> COUNT**

### **STATEMENT OF OFFENCE**

***UNLAWFUL PRODUCTION OF NARCOTIC DRUGS*** *Contrary to section 15(2) of the Drugs Control and Enforcement Act No 5 of 2015 as amended by Drugs Control and Enforcement (Amendments) Act No 15 of 2017, read together with paragraph 23 of the 1<sup>st</sup> schedule to and section 57 (1) of the Economic and Organized Crimes Control Act (CAP 200 RE 2002) as amended by the written Laws (Miscellaneous amendments) Act No 3 of 2016.*

### **PARTICULARS OF THE OFFENCE**

***MABULA S/O DOTTO@SABASABA*** on 26<sup>th</sup> day of January 2019 at Mwine area within Shinyanga Village in Shinyanga region, did cultivate 1 acre of Narcotic Drugs to wit Cannabis Commonly known as Bhangi.



The issue for my determination is one, whether the offence is bailable or not. The learned State Attorney invited the court to find the offence unbailable under the provisions of section 29 (1)(b) of the Drugs Control and Enforcement Act, Cap 95 R E 2019. Referring to the applicant's 1<sup>st</sup> count, he suggested that the section (section 29(1) (b)) expressly bars bail to persons charged with the offence involving narcotic drugs weighting 20 kilograms and above. I will reproduce the section: It reads:

*Section 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, and..."*

The catch words in this section is "**trafficking**".

The term "**trafficking**" is defined by section 2 the same Act to mean

*"the importation, exportation, buying, sale, giving, supplying, storing, **possession**, production, manufacturing, conveyance, delivery or distribution, by any person of narcotic drug or psychotropic substance any substance represented or held out by that person to be a narcotic drug or psychotropic substance or making of any offer..." (emphasis is added)*

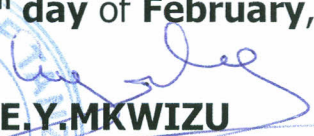
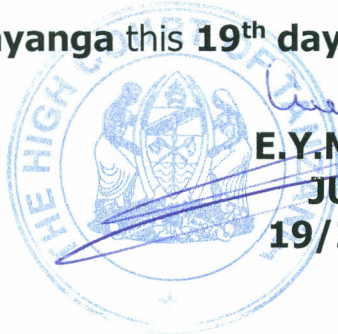
Therefore, by its definition the word "**trafficking**" includes "**possession**".

Under the cited section 29 (1) (b) above, the bail on offences involving trafficking which as stated includes possession of narcotic drugs, is restricted where the drugs involved weight 20 kilograms and above. Applicant in this application is charged with unlawful possession of Narcotic drugs weighting 84 kilograms. Obvious, this falls under the restrictions in section 29 (1) (b) and therefore not bailable.

As a result, the application is dismissed for the foregoing reasons.

It is so ordered.

**Dated at Shinyanga this 19<sup>th</sup> day of February, 2021**

  
  
**E.Y. MKWIZU**  
**JUDGE**  
**19/2/2021**