

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA SUB- REGISTRY
AT ARUSHA**

CRIMINAL APPLICATION NO 43 OF 2022

(Criminal Case No. 04 of 2021 in the District Court of Longido at Longido)

ZAKAYO AGINIWE SANGA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

15/12/2022 & 21/12/2022

KAMUZORA. J,

This is an application for bail brought under the provision of section 149 of the Criminal Procedure Act, Cap 20 [RE 2019] and sections 29 (4) and 36 (1) of the Economic and Organised Crimes Control Act, Cap 200 [RE 2002] read together with section 10 of the Written Laws (Miscellaneous Amendment) Act No 3 of 2016. The Applicant preferred this application praying for bail pending hearing and determination of Economic case No. 4 of 2021 which he stands charged before District court of Longido. His chamber application is well supported by the affidavit sworn by himself and attached with the charge sheet holding him before the district court.

The charge sheet indicates that, the Applicant stands charged with the offence of transporting narcotic drugs contrary to section 15(2) of the Drugs Control and Enforcement Act No. 15 of 2015 read together with paragraph 23 of the 1st Schedule of the Economic and Organised Crimes Control Act, Cap 200 [R.E. 2016]. It was alleged that on the 26th Day of February, 2021 at Engikareti village within Longido District in Arusha Region, the Applicant was arrested while transporting narcotic drugs weighing 161 kilograms of Catha Edulis commonly known as mirungi by using motor vehicle with registration No. DFPA 827 Make Toyota Hilux.

In his submission in support of the application, the Applicant argued that bail is accused's right under the law referring the Constitution of the United Republic of Tanzania. He pointed out that since he is a public servant working at the office of the District Commissioner at Longido as a driver and has permanent address, it is an assurance that if granted bail he will still attend in court. The Applicant also submitted that the investigation is now complete thus if bail is granted it will not affect investigation. He referred the EOCCA, Cap 200 [R.E. 2019], section 36 and insisted that, as he was not convicted of any offence before or jumped bail and no certificate of the DPP objecting the bail, this court should consider the law and grant him bail. He added that since the value of the

narcotic drugs to which he is charged with is less than 10 million, he deserves to be granted bail. He insisted that under section 48 of the CPA [R.E. 2022] this court has powers to grant bail in any offence.

Ms. Riziki Mahanyu, learned State Attorney contested the application and submitted that the Applicant is charged with the offence of transporting narcotic drugs contrary to section 15 (2) of the Drugs Control and Enforcement Act, Act No. 5 of 2015 read together with paragraph 23 of the 1st Schedule of the EOCCA Cap 200 [RE 2019]. That, the Applicant is charged for transporting mirungi weighing 161 using the motor vehicle with registration No. DFPA 827 Make Toyota Hilux. That, under section 29 (1)(b) of the Drugs Control and Enforcement Act, bail cannot be granted to the accused who is charged for transporting cannabis or mirungi weighing 20 kilograms and above. That, as the Applicant was charged for transporting 161 kilograms of mirungi he cannot be granted bail even before the High Court because the law specifically deny bail by mentioning the weight. She therefore prayed for the application to be dismissed and the Applicant to wait for the trial of the case as the investigation is complete.

In rejoinder the Applicant added that he is charged with the offence under the EOCCA, sections 57 and 62. He urged this court to apply the

CPA and grant bail as this court has discretionary powers to grant bail in any offence.

Before I go to the merit of the application, I would like to put clear that the Applicant is charged before the district court under the Drugs Control and Enforcement Act No. 15 of 2015 read together with paragraph 23 of the 1st Schedule of the Economic and Organised Crimes Control Act, Cap 200 [RE 2016] and not section 57 and 62 of the EOCCA suggested by the Applicant. Section 15 (2) of the Drugs Control and Enforcement Act No. 15 of 2015 to which the Applicant stands charged read;

*"Any person who produces, possesses, **transports**, exports, imports into the United Republic, sales, purchases or does any act or omits anything in respect of drugs or substances not specified in the Schedule to this Act but have proved to have drug related effects, or substances used in the process of manufacturing of drugs commits an offence, and upon conviction shall be sentenced to life imprisonment.*

As pointed out above, the offence to which the Applicant is charged with is created under the Drugs Control and Enforcement Act and not under the EOCCA as suggested by the Applicant. The offences under the DCEA are specified as economic offences under the EOCCA by section 23 of the EOCCA which reads;

"A person commits an offence under this paragraph who commits an offence under section 15, 16 or 23 of the Drugs Control and Enforcement Act.

From the above wording, the EOCCA does not create the offence of transporting narcotic drugs, rather it categorises offence of transporting narcotic drugs as an economic offence.

The Applicant contended that this court has powers under the Criminal Procedure Act to grant bail to any offence. In this matter I am of the firm view that, the law which should apply for purposes of bail are the DCEA and the EOCCA and not the CPA. The said laws; the DCEA and the EOCCA contains specific provisions for bail consideration on drugs offences and not the Criminal Procedure Act, [Cap. 20 R.E 2022] which has general provisions on bail. Section 29 (1) of Drugs Control and Enforcement Act, Act No. 15 of 2015 restricts bail for the accused person where the weight of the narcotic drugs is 20 kilograms and above. The same 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-

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

The law is clear under section 29 of the DCEA that, where the weight of the drugs is 20 kilograms and more, bail shall not be granted. There is no dispute in this matter that the Applicant is charged for transporting 161 kilograms of mirungi which is way above 20 kilograms prescribed under the law. This court being faced with similar situation in Misc. Criminal Application No.250 of 2019 **Juma Ridhiwani Mohamed and Frank Benedict Leman Vs. The Republic**, held that;

"... the Applicants were found in possession of 108.41 kilograms of cannabis far above the weight of 20 kilograms allowed by the law for the grant of bail. It follows therefore that this court has no jurisdiction to grant bail to the Applicant as requested. The same is the case where the accused person is facing a charge of trafficking of khat and any other prohibited plant weighing (20) twenty kilograms or more."

Similarly, section 36(4)(f) of EOCCA restricts bail to any person charged with an offence under the Drug Control and Enforcement Act. The said section reads: -

36(4) The Court shall not admit any person to bail if;

(f) if he is charged with an offence under the Drugs Control and Enforcement Act.

While discussing the above provision this court in **Juma Ridhiwani**

Mohamed (supra) made the following conclusion;

"Under the above cited provision, I am of the considered opinion that once a charge is preferred against any person under the Drugs Control and Enforcement Act then this court ceases to have jurisdiction to entertain bail application. As stated earlier the Applicants in this application are facing charges under Drugs Control and Enforcement Act read together with paragraph 23 of the first schedule to EOCA. It follows therefore that the Applicants apart from the restrictions of bail imposed by S. 29(1)(b) of the Drugs Control and Enforcement Act, No. 5 of 2015 they are also prevented from being granted bail under section 36(4)(f) of EOCA."

I subscribe to the above holding and conclude that the Applicant cannot be granted bail where there is specific provision denying bail as it is in this case. This application is therefore meritless hence dismissed.

DATED at **ARUSHA** this 21st Day of December 2022



A handwritten signature in blue ink, appearing to read "D.C. Kamuzora".

D.C. KAMUZORA

JUDGE