

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

CRIMINAL APPEAL NO. 47 OF 2020

(Originating from RMs Court of Arusha in Criminal Case No. 108 of 2020)

MAGRETH WILFRED KIMARO APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGMENT

3/9/2020 & 25/9/2020

ROBERT, J:-

The Appellant Magreth Wilfred Kimaro appeals against an order of the Resident Magistrates' Court of Arusha in Criminal Case 108 of 2020 dated 29th April, 2020 denying the Appellant bail on grounds that the court had no jurisdiction to grant bail in the offence charged.

A brief background of this matter reveals that on 29th April, 2020 the Appellant was arraigned before the Resident Magistrates' Court of Arusha for the offence of Trafficking in Narcotic Drugs contrary to section 15(b) of the Drug Control and Enforcement Act, No. 5 of 2015 as amended by section

8(a)(ii) and (iii) of the Drug Control and Enforcement Amendment Act, No. 15 of 2017.

When the Appellant was called upon to plead to the charge against her she pleaded not guilty and the prosecution prayed for adjournment of the case because investigation was not complete. The trial court decided that it had no jurisdiction to grant bail and ordered the Appellant to be remanded in custody. The court did not explain as to why it had no jurisdiction to grant bail. Aggrieved with the decision of the trial court, the Appellant filed this appeal challenging the decision of the trial court on one ground, which I take the liberty to reproduce as follows:

- 1. That the trial court erred both in law and fact by ruling/ordering that the trial court had no jurisdiction to grant bail to the accused person, while there was no proof of the actual weight of the narcotic drug involved in the offence the accused person is charged of.*

When the appeal came up for hearing the Appellant was represented by Mr. Amani Jackson, learned counsel, whereas the Respondent was under the services of Mr. Ahmed Hatibu, learned state attorney.

Submitting in support of his ground of appeal, the learned counsel argued that having been instructed to represent the Appellant in the pending

case he perused the trial court's file and realized that the trial court's file had only two documents namely, the charge sheet and the remand form.

He argued that an offence under section 15 of Cap. 95 (R.E. 2019) becomes an economic offence based on its weight and not its value. Thus, to ascertain the weight of the drugs involved, there has to be a certificate from Government analyst to that effect. To support his argument, he made reference to the case of **Athumani Mohamed Nyamvi and 3 others vs Republic, Miscellaneous Criminal Application No. 109 of 2012** (unreported) at page 13 where the Court held that:

"in order to deny (sic) bail on the trafficked drugs, the value of the trafficked drugs as certified by the commissioner for drugs must exceed ten million shillings. C'est-a-dire (that is to say) if the accused was found and charged with drugs trafficking but has not been certified by the Commissioner to exceed 10 million TZS Tanzanian shillings, then the accused person(s) will be entitled to be granted bail".

He maintained that, if the value of drugs was required to be certified in the cited case, equally the weight of drugs needs to be certified in the present case because the offence under section 15 of Cap. 95 (R.E. 2019) is based on the weight regardless of its value.

He stated that in his perusal of the court file he did not find any certificate from the Government analyst to certify the weight of the drugs involved in this case. There was no inventory. He argued that based on section 15 of Cap. 95 R.E 2019 failure to annex such a certificate into the trial court file makes the offence a normal criminal offence and not economic offence. He maintained that, the trial court had jurisdiction to grant bail to the Appellant since the weight of drugs in the charge sheet was not certified. He prayed for the court to grant the prayer made, quash and set aside the decision of the trial court.

In response, the learned state attorney submitted that the offence in question is not bailable according to law. He argued that the question of bail does not take into consideration whether the offence is economic or a normal offence but consideration is on the weight of drugs involved. He made reference to section 29(1)(b) of the Drugs Control and Enforcement Act, (Cap. 95 R.E.2019) and argued that the section prohibits bail for offences involving drugs weighing from 20 kilograms and above. He indicated that, in the charge sheet the accused person was found in possession of Cannabis Sativa, popularly known as bangi weighing 62.10 kilograms. Based on the cited section he argued that the current offence is not bailable.

Responding on the issue of weight of drugs, he submitted that the weight of drugs involved in the alleged crime is stated in the charge sheet. He argued that based on section 132 of the Criminal Procedure Act, Cap. 20 R.E. 2019 a charge is sufficient if it contains a statement of the offence and particulars of the offence. There is no requirement of attaching an inventory for a charge to be complete. Based on this, the weight of drugs which is known before the court is 62.10 kilograms which is stated in the charge sheet. The procedure of ascertaining the said weight was done by the relevant institutions which led to the filing of the charges against the Appellant. Since the hearing of the charges filed against the Appellant have not started in the trial court, it is clear that the prosecution has not had an opportunity to tender its exhibits which will prove the weight of the said drugs. Based on that, exhibits such as inventory and Government chemist report will be tendered during the trial of the case to prove the case against the Appellant.

He argued further that, it was proper for the trial court to rule that it had no jurisdiction to grant bail to the Appellant based on the weight of the drugs involved in the case. He agreed with counsel for the Appellant that, bail is the right of the accused person but cautioned that such a right is

guided by the requirements of the law. He prayed for the appeal to be dismissed in order to allow the hearing of the main case to continue in the trial court.

In his short rejoinder, the learned counsel reiterated the arguments in his submissions in chief and observed that section 29(1)(b) of Cap. 95 specifies the weight of drugs which are not bailable to be 20 kilograms thus, any offence involving drugs which are less than 20 kilograms is bailable.

He implored the court to deliver justice as the charge sheet by itself cannot suffice in proving the weight of drugs involved in the crime. There is a need for the prosecution to include an inventory in order for the court to determine if the offence is bailable.

Having heard the rival submissions from both parties and considered the records in this matter I will now pose here and make a determination on whether this appeal has merit.

The charges pending against the appellant at the RMs' Court of Arusha involves unlawful trafficking of narcotic drugs namely cannabis sativa weighing 62.10 kilograms.

Section 29(1)(b) of the Drug Control and Enforcement Act, Cap. 95

(R.E. 2019) provides that:-

"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) ...

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

Counsel for the appellant argued that, in order to ascertain if the weight of the drugs involved in the offence charged is twenty kilograms or more, the weight of the said drugs needs to be certified by the Government analyst otherwise the accused person will be entitled to be granted bail. However, this Court holds a contrary view. Section 29(1)(b) of Cap. 95 (R.E.2019) prohibits the Court from admitting to bail an accused person charged with an offence involving trafficking of cannabis weighing twenty kilogram or more. The question for determination is what is required for the Court to determine if an accused person is charged with the offence involving trafficking of cannabis weighing 20 kilograms or more. The answer to this

question, as rightly argued by Mr. Hatibu, is provided in section 132 of the Criminal Procedure Act, Cap. 20 (R.E. 2019). The section provides that:-

" Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged"

Guided by the quoted provision, this Court finds that where a charge sheet contains a statement to the effect that the accused person is charged with an offence involving trafficking of cannabis weighing 20 kilograms or more, that information shall be sufficient in establishing that the accused person is charged with the said offence. Certification from Government authority is not needed to establish that, that is the offence charged. Contents of the charge sheet are proved in the course of the hearing of the case not otherwise.

Therefore, since the charge sheet in Criminal Case No. 108 of 2020 filed against the appellant herein indicates that the appellant is charged with trafficking of narcotic drugs namely cannabis sativa weighing 62.10 kilograms, this Court finds and holds that, the trial Court had no jurisdiction to admit the appellant to bail under section 29(1)(b) of Cap. 95 (R.E.2019).

That said, this appeal is hereby dismissed for want of merit.

It is so ordered.


K.N.ROBERT

JUDGE

25/9/2020



