

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

MISCELLANEOUS CRIMINAL APPLICATION No. 38 OF 2020

(Originating from Economic Crime Case No 1 of 2020 of the District
Court of Tabora District at Tabora)

FANUEL ^{s/o} JOEL 1ST APPLICANT

OSCAR ^{s/o} JONAS 2ND APPLICANT

VERSUS

THE REPUBLIC RESPONDENT

RULING

Date of Last Order: 01/09/2021

Date of Delivery: 01/10/2021

AMOUR S. KHAMIS, J.

Fanuel Joel and Oscar Jonas were charged in the District Court of Tabora for an Economic offence namely, unlawful trafficking of narcotic drug contrary to **Section 15(1)(a) and (2) of the Drugs Control and Enforcement Act, No. 5 of 2015** as amended by the **Act No. 15 of 2017** read together with **paragraph 23 of the 1st Schedule** together with **Sections 50(1) and 60(2) of the Economic and Organized Crime Control Act, Cap. 200 RE 2019.**

According to statement of the offence of the charge, it is alleged by the Prosecution that, on 10th day of July, 2020 during morning hours, at new bus stand, Chemchem Ward within Municipality and

region of Tabora, the Applicants, jointly and together were found in possession of narcotic drugs to wit 60 kilograms of cannabis sativa.

Pending trial of economic Crime case No. 01 of 2020, the Accused moved this court under chamber summons to release them on bail.

The Application is predicated under the provision of **Sections 36(1), 5(a) and 29(4) of the Economic and Organized Crime Control Act, Cap. 200 (EOCA)**.

The Application is supported by Applicant's affidavits. They deponed that, the charge against them was bailable and the law vest this court a jurisdiction to determine such application.

Further, the Applicant averred that, they have credible and reliable sureties who are willing to comply with attached bail conditions to be set by this Court.

The Respondent Republic, have not responded to the Affidavits by the Applicant.

During hearing which was conducted orally, the Applicants appeared in person and the Respondent was represented by Jainess Kihwelo, Learned State Attorney.

The Applicants prayed for the Court to adopt contents of the Application and consider them as submission in chief.

Ms. Kihwelo supported the Application. She asked the Court to set bail conditions such as to record telephone Numbers of the local

leaders where the Applicants resides. That will help them to make a follow-up in case the Applicant jump bail.

One issue revolving this application is whether Court can grant bail for the Applicants who are facing offence under **Section 15(1)(a) and (2) of the Drugs Control and Enforcement Act, No. 5 of 2015** as amended by the **Act No. 15 of 2017** read together with **paragraph 23 of the 1st Schedule** together with **Sections 50(1) and 60(2) of the Economic and Organized Crime Control Act, Cap. 200 RE 2019.**

It is a general principle of law, under **Article 13(6)(b) of the Constitution 1977 as Amended** that a person is presumed innocent until proven guilty.

The presumption under the said Article, dictated the parliament to enact laws, which require an accused person who appears or brought before the court to face their charges to be released on bail. See **Section 148 of the Criminal Procedure Act (CPA)** and **Section 36 of Economic and Organized Crime Control Act, (EOCCA)** to mention a few.

The mentioned Sections require an accused person who appears or brought before the court to face their charges to be released on bail.

Notwithstanding however, not all offences areailable. There are offences, due to their nature, the Parliament opted for them to be unailable.

Section 29(1) of the Drugs Control and Enforcement Act, Cap. 95 RE 2019, for example, restrict bail for a person who is charged of an offence involving trafficking of cannabis, khat and any other prohibited plant weighing twenty kilogram or more.

The Section under reference couched this way: -

*“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) that accused is charged of an offence involving trafficking of Amphetamine Type Stimulant (ATS), heroin, cocaine, mandrax, morphine, ecstasy, cannabis resin, prepared opium and any other manufactured drug weighing twenty grammes or more;

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

(c) that accused person is charged of an offence relating to precursor chemical, other substances proved to have drug related effect or substances used in the process of manufacturing drugs, thirty litres in liquid form and thirty kilograms in solid form or more; and

(d) a person is charged under the provision of sections 16, 20 or 23.”

As stated before, that, the statement of offence of the charge facing the Applicants shows that, the Applicants are charged of possessing 60 kilograms of cannabis sativa.

In term of **Section 29(1)(b)**, such amount of cannabis sativa curtailing the Applicant to be released on bail.

Since this sanction is imposed by law, then, this Court is precluded from granting bail.

For those reasons, I found that the Applicant's application for bail is untenable, hence, the same, stand dismissed.

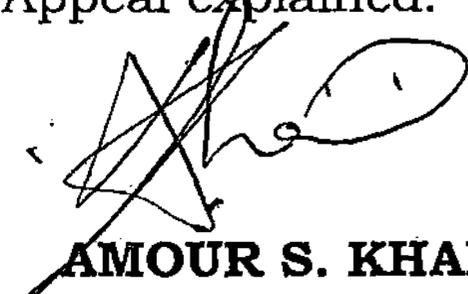
It is so ordered.



AMOUR S. KHAMIS
JUDGE
01/10/2021

ORDER:

Ruling delivered in chambers in absence of the Applicants and in presence of Mr. Rwegira Deusdedit, Senior State Attorney for the Respondent. Right of Appeal explained.



AMOUR S. KHAMIS
JUDGE
01/10/2021