

TANZANIA / JUDGMENT

paschaly matei mmasi and two others vs republic 2023 tzhc 19028 19 july 2023

COURT
TZHCDECIDED
19 July 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MOSHI DISTRICT REGISTRY AT
MOSHI MISCELLANEOUS CRIMINAL APPLICATION NO. 7 OF 2023 (.Arising from High Court
Moshi Economic Criminal Session 13 of 2022) PASCHALY MATEI MMASI.....
1st APPLICANT JULIUS PAUL MTALEMW A..... 2nd APPLICANT PATRICIA
SIMON LYIMO @NGOTIO @ CHUDEE.....3 rd APPLICANT VERSUS
REPUBLIC..... RESPONDENT

RULING

6th June & 19th July, 2023 A.P.KILIMI, J.: The applicants hereinabove have moved this court by way of chamber summons supported by their affidavits under section 148 (1), (2) and (3) of the Criminal Procedure Act Cap. 20 R.E. 2019 and any other enabling provisions of the law praying for the following orders: -

1. That, this court be pleased to release the applicants on bail pending the trial and final determination of the charged offence.
 2. That, any other order and relief this court may deem fit, and just to grant. In their joint affidavit, applicants deposed that they were found trafficking narcotic drug "cath edulis" commonly known as Mirungi and consequently charged with the offence of trafficking narcotic drugs contrary to section 15
- (1) (a) of the Drugs Control and Enforcement Act Cap 95 R.E. 2022, hereinafter "DCEA", read together with paragraph 23 of the first schedule to and section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act (Cap.200 RE 2022) hereinafter "EOCCA". Also pledged that they are ready to conform with all conditions which this court will impose to them. In the respondent counter affidavit duly sworn by Peter Utafu learned State Attorney contended that the Applicants are charged with a non-bailable offence in terms of quantity as prescribed under the Drug Control and Enforcement Act [Cap 95 R.E 2019] and the Economic and Organized Crimes Control Act [Cap 200 R.E 2022]. When this application came for hearing on 6th day of June, 2023. The applicants were unrepresented while Mr. Utafu Peter and Edith Msenga both learned state Attorneys appeared for the Respondent. Both applicants then prayed this court to consider what they have deposed in their affidavit

and concluded by praying to be granted bail 2 because they are ready to maintained the conditions to be imposed by this court. Responding on behalf of the Republic Ms. Edith Msenga, laerned State Attorney contended that, in order to know whether applicants qualified to be bail, the law require to consider factors stated at section 29(1) (b) of Drugs Control and Enforcement Act Cap. 95 R.E. 2019, in regard to this law it shows that for Drugs which exceed 20 kg, then the accused persons in that case is not allowed to get bail. The applicants were found with more than 20 years of Mirungi, which is 253.2 kg which is more than the quantity required, therefore due to that sealing provided by the law, the applicants are required not to be granted bail. To buttress the above position, the learned state Attorney invited me to consider the case of Zakayo Aginiwe Sanga vs. Republic Criminal Application No. 43 of 2022 HC at Arusha and Hasssan Abdallah Banda vs. Republic Misc. Economic Case No. 44 of 2018 HC Corruption and Economic Division at Dar es Salaam. Before I dwell into the merit of this application, I find convenient to state in respect to the offence charged against the applicants, in this kind of offence, there are special provisions for bail consideration. The DCEA and 3 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 o f a police station or an officer o f 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 o f an offence involving trafficking of cannabis, khat and any other prohibited plant weighing twenty kilogram or more; " [Emphasis supplied] In the case of Zakayo Aginiwe Sanga vs. Republic (supra) the applicant therein applied for bail while he was charged for transporting 161 kilograms of mirungi, it was ruled out that the quantity is above 20 kilograms prescribed under the law, hence the court concluded that the Applicant cannot be granted bail where there is specific provision denying bail as it is in this case. Therefore, from the above, 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. In this case at hand, I have considered the charge sheet which was attached together with the applicant's affidavit and stated at para two of their joint affidavit. It is true as rightly contended by respondent; both were found trafficking 253.05 kilograms of Narcotic Drugs "Cath Edulis" commonly known as Mirungi. In the above circumstances stated and the quantity of drugs they were found with, I am settled that the law prohibits the applicants to be granted bail, I therefore subscribe with the contention by the respondent counsel, consequently I proceed to dismiss this application for want of merit. It is so ordered. DATED at MOSHI this 19th day of July, 2023. 5

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