IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

ECONOMIC APPEAL NO.5 OF 1996

ABASI ISMAIL ATHUMANI NDOSSI ..... APPELLANT

Versus

THE REPUBLIC ..... RESPONDENT

J U D G M E N T

CHIPETA, J.:

The appellant, Abasi Ismail Athumani Ndosi @ Chapuchapu, who was the second accused at the trial, was jointly charged with another with the offence of unlawful possession of a drug called Ativan contrary to sections 9(1) and 23(2) of the Dangerous Drugs Ordinance as read together with Paragraph 8 of the first Schedule to, and section 59 of, the Economic and Organized Crime Control Act No.13 of 1984. After a full trial, the appellant's co-accused was acquitted but the appellant was convicted as charged and sentenced to five years imprisonment. He now appeals against both the conviction and sentence.

The prosecution's evidence was that on 18th November, 1994, No. C.440 D/Sgt Danford (P.W.1) went to a place called Sunset Villa Bar at Morogoro. P.W.1 went there after receiving information that suspected criminals were at that place. It was then at 12.30 p.m.

On arrival there, he found the appellant and his co-accused. On seeing him, the appellant and his colleague tried to run away, but P.W.1, who was accompanied by other Police Officers, managed to arrest the appellant and his colleague. At the time of his arrest, the appellant was found in possession of, among other things, four tins of soda - two of mirinda and two of fanta. P.W.1 observed that the two mirinda tins had some small holes which were covered

with glue. This made P.W.1 suspect that something had been injected into those Mirinda tins. The two tins were then sent to the Government Chemist. In his Report, the Government Chemist stated that the two tins had their contents mixed with a dangerous drug called Lorazepam or Ativan, which drug is said to cause heavy drowseness or sleep and can even cause death. The Report, which was tendered as Exhibit P.2, further stated that the drug is a Part I poison and so cannot be used without a doctor's prescription.

The appellant was then charged with this offence.

In his defence, the appellant admitted that he was found in possession of the drug. He added, however, that the drug was prescribed for him by a doctor at Kinondoni Hospital, and he produced a prescription which was tendered as Exhibit D.1.

An examination of Exhibit D.1 shows that the prescription was given to the appellant on 27th March, 1994, and was a dose for three days. There is no prescription for another dose thereafter. That being the position, and as correctly submitted by Miss Otaru, learned state attorney, the possession of the drug by the appellant some nine months later without the relevant prescription amounted to illegal possession of the drug. The appellant's guilt, therefore, was established beyond reasonable doubt.

With regard to the sentence, the learned trial senior resident magistrate gave good reasons for passing the sentence and, if anything, the sentence erred on the side of leniency.

For the foregoing reasons, this appeal fails and so is hereby dismissed in its entirety.

B. D. CHIPETA
JUDGE

Judgment delivered in Court this 30th day of March, 1998 in the absence of the parties.

B. D. CHIPETA
JUDGE
30/3/1998