IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

(DC) CRIMINAL APPEAL NO. 76 OF 2019

(Originating from Criminal Case No. 251 of 2019 in the District Court of Hai at Bomang'ombe)

ADAM ABDALLAH RAMADHANI ---------- APPELLANT

VERSUS

THE REPUBLIC ---------- RESPONDENT

JUDGMENT

MUTUNGI .J.

The appellant was charged with the offence of Trafficking in Narcotic Drugs contrary to section 15 (A) (1) and 2 (c) of the Drugs and Enforcement Act No. 5 of 2015 as amended by section 9 of the Drugs Control and Enforcement (Amendments) Act No. 15 of 2017. The particulars of the offence alleged that, on 17th September, 2019 at Kikavu Bridge within Hai District in Kilimanjaro Region, the appellant was found trafficking 1.20 Kilograms of "Cannabis Sativa" commonly known as Bhangi. When the charge was read

over and explained to the appellant, he is recorded to have pleaded;

> "It is true that I was found trafficking drugs that is cannabis sativa."

The trial court entered a plea of guilty. When the facts of the offence were outlined to him, he agreed all were true. The trial court went on convicting him on his own plea of guilty and sentenced him to a term of thirty years imprisonment. He was aggrieved and has filed this appeal basing on eight grounds.

At the hearing of the appeal, the appellant appeared in person and had no legal representation, whereas the Republic was represented by Mr. Omari Kibwana Senior State Attorney. Before venturing to the merits or otherwise of the appeal it is imperative to reproduce the grounds of appeal as hereunder: -

(1) That, the learned trial Magistrate grossly erred in both law and fact in convicting and sentencing the appellant despite the charge being not proved beyond reasonable doubt against the appellant.

(2) That, the learned trial Magistrate grossly erred in both law and fact in convicting and sentencing the appellant basing on an equivocal plea of guilty.

(3) That, the learned trial Magistrate grossly erred in both law and fact in convicting the appellant basing on his plea but failed to note that the appellant did not understand the nature of the case facing him.

(4) That, the learned trial Magistrate grossly erred in both law and fact in convicting and sentencing the appellant while there was no any proof that what is said to have been found was bhang.

(5) That, the learned trial Magistrate grossly erred in both law and fact in convicting and sentencing the appellant while he did not understand the charge and had no defence.

(6) That, the trial Magistrate grossly erred in both law and fact to convict and sentence the appellant while the alleged 288 rolls of cannabis sativa (bhang) had not been taken to the Chief Government Chemist for analysis.

(7) That, the learned trial Magistrate grossly erred in both law and fact by not considering that every constituent of the charge should be explained to the accused and he fully understood the charge on every element.

(8) That, the trial Magistrate grossly erred in both law and fact when he failed to adopt the opinion in the case of **Ibrahimu Bin Salehe V. Republic TLR (1) 641**.

When the appeal was called on for hearing the appellant briefly stated that, he was jailed for an offence he did not know as he was sick and did not comprehend what was going on. He then prayed his appeal be upheld.

Submitting against the appeal Mr. Kibwana argued the 1st and 4th grounds of appeal together and stated that, the appellant had no right to appeal since he pleaded guilty therefore, he could only appeal against the sentence according to section 260(1) of the Criminal Procedure Act, Cap 20 (CPA). He thus summed up that, the two grounds lacked merit.

With respect to the second ground of appeal, he submitted

that the same lacked merit as the court was right to convict and sentence the appellant according to section 228(2) of the CPA once he pleaded guilty.

On the third and fifth grounds, Mr. Kibwana submitted, the appellant understood the charge facing him and the facts read out to him were very clear. The appellant admitted to these facts. Therefore the argument on these grounds is baseless.

On the sixth ground Mr. Kibwana submitted that, there was no need of verification by the government chemist whether what the appellant was found with was bhang since the appellant himself admitted that it was bhang as seen on page 1 of the proceedings.

On the seventh ground, Mr. Kibwana reiterated his argument submitted on the third ground. Finally on the last ground of appeal he submitted, once the appellant understood the charge and pleaded guilty to a grave offence the sentence was lawful. In the end Mr. Kibwana prayed the appeal be dismissed and sentence upheld.

In his rejoinder submission the appellant insisted that, he did

not at all understand the charge thus prayed to the court to uphold his appeal.

I have thoroughly gone through the records of the trial court, grounds of appeal and submission by both parties. Now in determining whether this appeal is meritorious, the issue for determination is whether the conviction was based on an equivocal plea. In the case of **Keneth Manda v Republic [1993] T.L.R. 107** the court held that: -

> *"An accused person can only be convicted on his own plea of guilty if his plea is unequivocal. That is, where it is ascertained that he has accepted as correct facts which constitute all the ingredients of the offence."*

Assessing the plea of guilty by the appellant as found on the record of appeal (page 1), when he was requested to plea, he pleaded guilty to the charge. In his own words is recorded to have said: -

> **"It is true that I was founded trafficking drugs that is Cannabis Sativa"**

This was followed by a narration of facts by the prosecution to the appellant (page 2) and the appellant is recorded to have admitted to all the facts. In the circumstances, I must agree with Mr. Kibwana that the appellant's plea was unequivocal. The facts read to him did disclose all the necessary ingredients of the offence charged. For the purpose of plea of guilty, the facts stand as the evidence, and thus, for the plea of guilty to be unequivocal, they must disclose all essential ingredients of the offence charged. In the Kenyan case of **Maldine Akoth Barasa & another V. Republic (2007) KLR 193 of 2005** the Court of Appeal outlined what constitutes the offence of trafficking in Narcotic drugs which is a persuasive authority and I may wish to borrow leaf from the same as hereunder: -

> **"....It is evident from the definition of trafficking that the word is used as a term of art embracing various dealing with Narcotic drugs or psychotropic substances. In our view for the charge sheet to disclose the offence of trafficking the particulars must specify clearly the conduct of an accused which constitutes trafficking...."**

Perusing the typed trial court proceedings at page 2, the facts constituting the offence were clearly stated and read to the accused who agreed that they were all true. For the purpose of record and reference the facts are as hereunder: -

(1) That personal particulars of the accused are as stated in the charge sheet.
(2) That he stand charge with one count as shows.
(3) That on 17/9/2019 accused was at Kikavu Bridge here at Hai District.
(4) That on 17/9/2019, one Ass. Inspector Komba was on patrol with other Police and at Kikavu he found accused riding a motorcycle with no. MC 243 CFQ make Sinorai.
(5) That they doubted on him and on inspecting him as he got an accident they found with him 288 rolls of Bhang.
(6) That today is before this court on what he did.

Court: - The agreed facts

Accused: - I agree with all facts. That is true

Accused: SIGNED

Public Prosecutor: SIGNED

Court: - Section 288 (1) of the Criminal Procedure Act, complied with

Conclusively from the above extract in the court's record, it is ruled out that, the appellant was properly convicted. The same was under scored in the case of **KENETH MANDA V. Republic [1993] TLR 107** where the High Court held: -

> **"An accused person can only be convicted on his own plea of guilty if it is ascertained that he accepted as correct facts which constitute the ingredients of the offence charged".**

There is an argument that the said "Bhang" was supposed to have been subjected for verification by the Government Chemist. With due respect, once the appellant had admitted it was Bhang, what more was needed of the prosecution. It is therefore incomprehensible for the appellant to allege at this stage that, he did not understand the charge at all. I join hands with the submission by Mr.

Kibwana Senior State Attorney that, the trial court was right in convicting the appellant on his own plea of guilty as provided for under section 228(1) & (2) of the Criminal Procedure Act (Supra).

Given the foregoing, I uphold the decision of the District Court and dismiss the appeal forthwith.

B. R. MUTUNGI
JUDGE
23/7/2020

Judgment read this day of 23/7/2020 in presence of the appellant and in absence of the respondent dully notified.

B. R. MUTUNGI
JUDGE
23/7/2020

RIGHT OF APPEAL EXPLAINED.