

**IN THE HIGH COURT OF TANZANIA  
(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**(PPELLATE JURISDICTION)**

**DC CRIMINAL APPEAL NO. 127 OF 2019**

(Original Criminal Case No. 1 of 2018 of the District  
Court of Singida at Singida)

**MAGRETH LUE .....APPELLANT**

**VERSUS**

**THE REPUBLIC .....RESPONDENT**

*2/3/2020 & 1/4/2020*

**JUDGMENT**

**MASAJU, J.**

The Appellant, Magreth Lue, was charged with, and convicted of the offence of unlawful possession of narcotic drugs contrary to section 15 (A) 2 (2) and (2) of the Drugs Control and Enforcement Act No. 5 of 2015 as amended by section 9 of the Drugs Control and Enforcement (Amendment) Act, 2017. The Appellant was sentenced to thirty (30) years imprisonment by the District Court of Singida at Singida.

Aggrieved by the Judgment of the trial Court, the Appellant came to the Court by way of an appeal against both the conviction and the sentence thereof as it can be so seen in the Petition of Appeal that bears eight (8) grounds of appeal in which she essentially argues that the case against him was not proved beyond reasonable doubt.

At the hearing of the appeal on the 12<sup>th</sup> day of March, 2020 the Appellant appeared in person and fully adopted her grounds of appeal to form her submissions in support of the appeal in the Court. She prayed the Court to allow her appeal and set her at liberty.

The Respondent Republic was represented by Ms Bertha Kulwa, the learned State Attorney who supported the appeal for the following reasons, thus;

That, there was contradiction between the arresting officer, H 5932 D/C Ibrahim (PW4) and the Government Chemist Bonaventure Njoka Masangu (PW6) on the weight of the alleged narcotic drugs, bhang (Exhibit P1). PW6 testified that the 167 bhang rolls weighed 16 grams contradicting PW4's evidence as well as the charge sheet. That, the contradiction benefited the Appellant's defence together with the punishment meted against the Appellant. Had the Appellant been indicted for unlawful possession of 16 grams of bhang, she could have been sentenced to three (3) years imprisonment or a fine of not less

than 500,000/= TZS or both as per section 17 (1) (b) of the Drugs Control and Enforcement Act No. 5 of 2015. That the trial Court acted on the Drugs Control and Enforcement Act as amended in 2017 as per the alleged 418 grams weight which was not proved and thereby inflicting the punishment of thirty (30) years imprisonment.

The Respondent Republic further submitted that, PW6 testified to be a Government chief Chemist based in Mwanza whilst Inspector Josephat Kulewa (PW1) testified that he sent Exhibit P1 to Arusha Government Chief Chemist Zonal office. The evidence is silent on how the said exhibit eventually landed at Mwanza Government Chief Chemist Zonal office.

That, the provisions cited by the trial Magistrate when convicting the Appellant are quite different from the provisions cited in the statement of offence on the charge sheet. Thus, it is as if there was no conviction at all.

The Court is inclined to agree with parties that the prosecution case in the trial Court was fraught with gaps. The Appellant was alleged to have been found in possession of 418 grams of bhang. The prosecution evidence was contradictory on the exact amount of the bhang alleged. PW1 testified to have found the Appellant with 167 rolls of bhang weighing 418 grams but the Chief Government Chemist (PW6) testified to have measured the bhang and it weighed 9 grams only, the Court is

left with doubts as to what is the exact weight of the alleged bhang.

The Chief Government Chemist alleged to be working at the Mwanza Zonal office and that the bhang rolls were presented to him for examination by one Saile M. Kurata. The said person was not called by prosecution to testify on the reasons for taking the drugs to Mwanza. Thus, it is not clear why the drugs presented by PW1 in Arusha Chief Government Chemist office were then taken to Mwanza.

The prosecution also alleged that the Appellant confessed at the police station, and her alleged cautioned statement (Exhibit P4) was tendered in the trial Court. The exhibit P4 is full of doubts since time for commencement and finalizing the taking of the cautioned statement has been altered. Thus, the Court finds it hard to believe if really the time written is the exactly time the cautioned statement was taken. The Exhibit P4 is expunged from records of prosecution evidence.

The search conducted by PW1 was also illegal since it contravenes section 38 (1) of the Criminal Procedure Code [Cap 20] which authorises only the police officer in-charge of the station or to issue a written authority to any police officer under him to search. PW1 did not prove in the trial Court, to have had a written authority given to him for the purpose of searching the

Appellant's house. The seizure (Exhibit P2) illegally obtained is therefore expunged from records of prosecution evidence.

The Court agrees with the Respondent Republic that the trial Court wrongly convicted the Appellant with the crime she was not charged with. At page 1 of the trial Court's judgment it is stated that the Appellant was charged with one Count of being in unlawfully possession of Narcotic Drug contrary to section 15 (a) 2 (c) and 2 of Drugs control and Enforcement Act No. 5 of 2015 read together with Regulation 3 (1) (a) of the Drug Control and Enforcement (Amendment) Act, 2017. The section is not in existence in the said law neither did it appear in the charge sheet. In that case, the Appellant can not be said to be convicted of the non-existing provision.

That said, the prosecution case against the Appellant in the trial Court was not prove beyond reasonable doubt as so rightly submitted by both parties to the appeal. The appeal is accordingly allowed. The conviction, sentence and orders thereto are hereby quashed and set aside respectively. The Appellant shall be released from prison forthwith unless he is otherwise held for another lawful cause.



  
GEORGE M. MASAJU

**JUDGE**

2/4/2020