

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

CRIMINAL APPEAL NO. 92 OF 2019

(Arising from Criminal Case No. 133 of 2019 of the District Court of Kahama at Kahama)

JUMA MAZIKUAPPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

28th April & 21st May, 2021

MKWIZU, J.

Appellant was convicted by the District Court of Kahama at Kahama in Criminal case no 133 of 2019 on his own plea of guilty. He was sentenced to 30 years imprisonment. Dissatisfied, appellant appealed to this court on two main grounds that hinger on one issue that the plea was equivocal

At the hearing appellant had the services of Mr. Chubwa Muheza while the respondent/ republic had the services of Mr. Enosh Gabriel Kigoryo learned State Attorney.

Mr. Chubwa submitted that the plea by the appellant was equivocal. The trial court did not explain to the appellant the substance of the charge as required

by section 228 of the CPA. He cited the cases of **Njile Samweli@ John V Republic**, criminal appeal No 286 of 2016 (unreported), and **Hyasint Nchimbi V R**, Criminal appeal No 109 of 2017 (unreported) and prayed for the court to declare the plea as equivocal.

While acknowledging the fate of the nullification of the proceedings after declaring the appellant's pleas as equivocal, Mr. Chubwa invited the court not to order for a fresh trial on the ground that there was unprocedural tendering of exhibits in this case and therefore an order for a fresh trial would be to allow prosecution to rectify the already committed errors. The case of **Kaunguza Machemba V Republic**, criminal appeal No 157 B of 2013 and **Matatizo Bosco V R**, Criminal Appeal No 287 of 2014 (all unreported) were cited on this point. He on that ground prayed to have the appeal allowed and the appellant be released from prison.

Mr. Kigoryo supported the appeal but with a different opinion on the way forward. He conceded that the plea of guilty was equivocal. His main contention was that, the facts read to the appellant did not disclose the essential ingredients of the offence the appellant was charged with. The appellant was charged with the offence of unlawful possession of narcotic

drugs but the presented facts did not have the essential ingredients of “**unlawful possession**” and therefore the appellant was not made to understand the proper elements of the charge to which he was admitting argued Mr. Kigoryo. He cited to the court the case of **Buhimila Mapembe V Republic**, (1988) TLR174 and **Lawrance Mpinga V R**, (1983) TLR 166.

On the way forward, it was Mr. Kigoryo’s submissions that, the file should be remitted to the trial court for a fresh trial. He referred the court to the decision of **Njile Samweli’s case** (Supra) and **Dilala Gilablugalda V R**, Cr. Appeal No 72 of 2014 (unreported).

On the irregularity on the tendering and admission of exhibits at the trial court’s proceedings, Mr. Kigoryo was of the view that, the tendering of exhibits when the accused pleads guilty to the charge is part of the facts and therefore does not invalidate the plea. On this, the case of **Joel Mwangambo V Republic**, Criminal Appeal no 516 of 2017 was cited.

As indicated above the appeal here is on the conviction based on a plea of Guilty. In **Ramadhani Haima v. Republic**, Criminal Appeal No. 213 of

2009, (unreported) Court of Appeal listed situations where an appeal against conviction arising out of a plea of guilty may be entertained, namely

1. The plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in treating it as a plea of guilty;
2. An appellant pleaded guilty as a result of a mistake or misapprehension;
3. The charge levied against the appellant disclosed no offence known to law, and
4. Upon the admitted facts, the appellant could not in law have been convicted of the offence charged.

The grounds of appeal before this court today falls under item one listed above. The court's duty is therefore to see whether the appellant's plea was equivocal as complained or otherwise.

The appellant under scrutiny was charged with an offence of unlawful possession of Narcotic drugs contrary to section 15 A (1) and (2) (c) of the Drugs control and Enforcement Act No 5 of 2015 as amended by Act No 15 of 2017. It was in the particulars of the offence that on 6th day of January,

2018 at Mwime area within Kahama District in Shinyanga region appellant was found in unlawful possession of narcotic drugs to wit: Cannabis commonly known as Bhangi weighs 12. 780 kilograms.

The essential ingredients in this offence is the unlawfully possession of narcotic drugs. It is a settled law that before entering a conviction a trial court must ensure that an accused has fully understood and appreciated the charge that is laid against him and intends to plead guilty thereto. See for instance the case of **Boniface Aiden V Republic**, Criminal appeal No 35 of 2012(Unreported). Now did the trial court made the appellant understand the ingredients of the charge he was facing?. The proceedings will disclose the truth.

The appellant was arraigned before the trial court on 5/4/2019. The charge was read to him and he pleaded NOT GUILTY to the charge. The court correctly recorded his plea of not guilty. Later, on 18/7/2019 the State Attorney informed the court that the matter was for the preliminary hearing and that he was ready. Accused also indicated his readiness for the preliminary hearing. The proceedings thereafter followed as follows:

"Court: Accused reminded over the charge and required to plea.

Accused: *It is true I was found in possession of the said bhangi*

E. N. Kyaruzi-SRM

18/07/2019

Court: *Accused Entered as a plea of Guilty*

E. N. Kyaruzi-SRM

18/07/2019

FACTS

It is alleged that on 6th day of January 2018 at about 17.20 hrs at Mwime area, police officer D/Machella arrested the accused person at his residence being in possession of bhangi 12.780kg hidden under the bed. The accused person was brought at Kahama police station being in possession of the bhangi and the same seized from him. I pray to present a report from a Government Chemist and Bhangi as exhibit

E. N. Kyaruzi-SRM

18/07/2019

Court: *A report from the government Chemist and the 12.780kg of bhangi hereby admitted marked exhibit P1*

E. N. Kyaruzi-SRM

18/07/2019"

It is evident from the quoted part of the trial court's proceedings above that though Appellant was charged with **Unlawful possession of narcotic drugs**, the facts read and explained to him before the court did not indicate such an element. Trial court failed, to explain to the appellant each of the essential ingredients of the charge. The plea by the appellant was that **"it is true I was found in possession of the said bhangi"**. The **'unlawfulness'** of the possessed drugs was not explained in the narrated facts.

For a charge of unlawfully possession of narcotic drugs to succeed, the prosecution has to prove that the appellant possession of the alleged drugs was unlawfully and not otherwise.

The appellant in this case, pleaded guilty to the charge without a clear understanding of the charge that was facing him. This is contrary to a well-established law that before a court accepts a plea of guilty from an accused person it must ensure that the charge is fully understood by the accused. See for instance the decision in **Mohammed Yusuph Arap v Republic** [1957] EA 551. Appellants' plea is nothing but equivocal plea of guilty. In

law, conviction based on an equivocal plea is null and void for it is incapable of holding the appellant responsible of the offence charged.

Mr. Chubwa for the appellant has suggested for the release of appellant on the reason that the trial court had irregularly admitted the exhibit by the prosecution and therefore if a fresh trial is ordered would be to allowing prosecution to correct their mistake. On the other hand the learned State Attorney invited the court to order for a fresh trial on the ground that the tendered exhibit in such a case forms part of the facts.

I have considered the rival arguments above. It is true that prosecution tendered and the court did admit two exhibits, the alleged bhanghi measuring 12.780 kg and the Government Chemist Report. The said exhibits, in my considered view, were admitted as part of the facts read to the accused person. Thus, the nullification of the proceedings takes away from the records the two exhibits as well. The appellant status is reverted back to the position he was before the recording of his plea by the trial court and therefore ordering a fresh trial will not be prejudicial to him. This being the position I find the argument by the State Attorney convincing.

That said, the appeal is allowed as explained above, the conviction on the purported plea of guilty is quashed and its resultant sentence is set aside. The Court file is remitted back to the trial court for a fresh trial of the appellant in accordance to the law.

DATED at SHINYANGA, this 21st May, 2021


E.Y MKWIZU
JUDGE
21/5/2021

Court: Right of appeal explained.



E.Y MKWIZU
JUDGE
21/5/2021