IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 65 OF 2021

(Originating from Criminal Case No.15 of 2021, In the District Court of Mvomero, at Mvomero - Before Hon. A. H. Waziri, RM; Delivered on 03rd the day of February, 2021)

ABUBAKARY EDWARD @ TATIYA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

3rd Sept, 2021 & 23rd Nov, 2021

M. J. CHABA, J.

Abubakary Edward @ Tatiya, the appellant herein was convicted by the District Court of Mvomero, at Mvomero on his own plea of guilty of the charge of trafficking in Narcotic Drugs contrary to section 15 A (1) and (2) (c) of the Drugs Control and Enforcement Act [Cap. 95 R.E. 2019]. The particulars of the offence are to the effect that on the material date on 20th December, 2017 at Vitemvu area Melela Ward, within the District of Mvomero in Morogoro Region, the appellant did traffic in Narcotic Drugs, to wit; 14.25 Kilograms of Cannabis Sativa commonly known as "Bhang" by using a motorcycle with Registration No. MC 703 BLF.

Upon such conviction, the trial court passed on the appellant the mandatory sentence of thirty (30) years imprisonment.

However, the appellant was unhappy with the decision of the trial court. He therefore, preferred instant appeal and lodged four (4) grounds of appeal which for brevity, can be condensed as to the following grounds:

1. *That, the plea of guilty was wrongly entered without stating every ingredient of the offence. Again, the plea of guilty relied on the appellant's words that; "it is true" without taking into consideration of the word "trafficking".*
2. *That, the facts stated and relied upon were inconsistent with the charge.*
3. *That, the sentence of thirty (30) years was excessive since the appellant was the first offender.*

During the hearing of this appeal, the appellant appeared in person via video link from Isanga Prisons in Dodoma, unrepresented. Indeed, the Appellant had nothing to add to his grounds of appeal, hence he invited this court to find it sufficient to overturn both conviction and the sentence imposed against him and allow the appeal. The Respondent Republic was represented by Ms. Florida Wenceslaus, learned State Attorney who vehemently resisted the appeal. The learned State Attorney insisted in her oral submission that the trial court properly convicted the appellant on his own unequivocal plea of guilty.

In amplification of the first ground, Ms. Florida submitted that looking at the trial court proceedings, it shows that the charge sheet was read in Swahili, the language which the appellant understood better. That when

the appellant understood the charge sheet, he pleaded guilty to the charge. He emphasized that the trial court did not record, "it is true" as claimed by the appellant, but it recorded in Swahili language to this effect; *"Ni kweli nilisafirisha hiyo bhangi kwa kutumia pikipiki aina ya Houjue yenye usajili namba MC 703 BLF".*

Ms. Florida maintained that in as much as the above explanations is concerned, the appellant pleaded guilty to the offence. Again, it was Ms. Florida's argument that the trial court magistrate also commented that as the appellant appeared in court in person, unrepresented; that is why the charge was read over in Swahili language which is better known by the appellant. As to the question whether the appellant committed the offence or not, when he was asked by the trial court, Ms. Florida stressed that the accused confessed to have committed the offence.

As to the second ground of appeal, Ms. Florida argued that since the court records at page 2 of the typed proceedings shows that the facts of the case were read out commenced with the offence which the appellant stood charged, that is the offence of trafficking in narcotic drugs contrary to section 15 A (1) and 2 (c) of the Drugs Control and Enforcement Act [Cap. 95 R.E. 2015]. And at page 3 of the typed proceedings the records reveals that the trial court continued to read the facts in respect of the offence in which it was committed on 20/12/2017 and that he was arrested at Vitemvu area, Merera Ward within the District of Mvomero in Morogoro Region. The appellant was arrested while in possession of 14.25 Kgs of bhang parked in the so-called "kiloba" carried on the aforesaid motorcycle.

When was arrested he admitted that the said bhang was his and he was transporting it to Makuyu area. The appellant was apprehended by the police officers namely, DC Livingstone and Ayoub.

It was Ms. Florida's argument that the appellant did agree that all the facts read over to him were correct and he put his thumb signature to prove to that effect. In that view, the appellant did agree upon satisfying himself with the facts narrated by the prosecution side. The learned State Attorney further countered the appellant's complaint that the facts of the case were inconsistent with the offence. She submitted that such an allegation is not true because the appellant is recorded to have been admitted that he was transporting the said bhang to Makuyu area and he carried the same on his motorcycle. In that view, the offence is compatible with the facts read over to the appellant.

Moreover, the grievance that the trial magistrate erred in law by not explaining or notifying of the ingredients of the offence as raised in the first ground, the learned State Attorney contended that such complaint is not true. She argued that the ingredients of the offence were stated clearly into the facts of the case whereby the appellant agreed and put down his signature. Relying on the above reasons, Ms. Florida prayed that this ground be dismissed for lack of merit.

In respect of the third ground of appeal, the learned State Attorney argued that the sentence of thirty (30) years imposed by the trial court against the appellant was proper even if the court couldn't consider the fact that he was the first offender. She contended that this appeal has no

merit because the appellant pleaded guilty to the offence, he stood charged. She added that, under section 360 (1) of the CPA, the law provides that:

> *"No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence.*

It is on the basis of the above provisions of the law, the learned State Attorney asked this court to dismiss the appeal in its entirety.

To rejoin, the appellant for obvious reasons of being a layman did not have anything to add rather than praying for the court to allow his appeal.

Just like any other appeal involving the appellant's conviction on his own plea of guilty, the issue the appellate court is always confronted with is this; *whether the accused's plea was unequivocal and unambiguous to have attracted conviction;* and if so, *did the appellant have a right of appeal against conviction?* This is so because there is no right of appeal against conviction as envisaged by the provisions of the law under section 360 (1) of the CPA. The only exception is where the appeal is against legality of sentence.

It should be noted that our criminal jurisprudence is clear that, criminal trials before subordinate courts is governed by the Criminal Procedure Act [Cap. 20 R.E. 2019] and the process begins with the taking of a plea under section 228. A plea of guilty may be recorded on the authority of section 228 (2) which provides that:

*"**Section 228 (2)** - If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible, in the words he uses, and the magistrate shall convict him and pass sentence upon or make an order against him unless there shall appear to be sufficient cause to the contrary."*

In **Adan v. Republic** [1973] EA 445, the defunct Court of Appeal laid down in the simplest and plainest terms the manner in which pleas of guilty should be recorded and the steps which should be followed. I find it apt to set out the holding in full. The Court held that:

1. *the charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands;*
2. *the accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded;*
3. *the prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts;*
4. *if the accused does not agree with the facts or raises any question of his guilt his reply must be recorded and change of plea entered;*
5. *if there is no change of plea a conviction should be recorded and a statement of the facts relevant to sentence together with the accused's reply should be recorded."*

It is apparent from the court records that, **one,** the charge was read in Swahili which is the language better known by the appellant and there is

no complaint by the appellant that he did not understand the language. **Two,** after the charge was read over to him, he replied to this effect:

> *"Ni kweli nilisafirisha hiyo bhangi kwa kutumia pikipiki aina ya Houjue yenye usajili namba MC 703 BLF".*

Which means that:

> *"It is true I transported the said bhang using a motorcycle type Houjue with registration No. MC. 703 BLF."*

This indicates that the appellant understood the charge and admitted to have committed the same. **Three,** the appellant unequivocally admitted the facts read by the prosecution establishing the ingredients of the charged offence and the manner on how it was perpetuated by the appellant and the reply was the same, as it transpired at page 3 of the typed proceedings that:

> *""All facts are true and correct and I admit them all to be true." And according to the court records there was no change of plea advanced by the appellant".*

From the above explanations, I also believe that the standards and procedures applicable in criminal cases where an accused pleads guilty to the charge as it was laid down in **Rex v. Yonasani Egalu & Others** (1942) EACA 65 cited with approval by the Court of Appeal of Tanzania in the case of **John Faya v. R,** Criminal Appeal No. 198 of 2007 (unreported), was adhered to in the instant case. The procedure laid

therein requires the trial court to explain to the accused every constituent of the charge on which the appellant admits and ensure that he or she fully understands them before entering a plea of guilty.

My evaluation and assessment on the court records shows that this task was done by the trial court. I am satisfied that the trial court correctly entered an unequivocal and unambiguous plea of the appellant and thus it passed the relevant tests alluded to above. I have further read the facts of the case and did not come across with any fact(s) which is inconsistency with the charge.

For this reason, I am in agreement with Ms. Florida that the first and second grounds of appeal have no merits.

As to the thirty grounds of appeal, I believe that the Law is very clear under section 15 A (1) of and 2 (c) of the Drugs Control and Enforcement Act [Cap. 95 R.E. 2019] that thirty (30) years imprisonment is a mandatory and it is a statutory penalty for the offence of trafficking in narcotic drugs. ***In ex tenso*** the provisions of the law read:

> *"Any person who* ***traffics*** *in narcotic drugs, psychotropic substances or illegally deals or diverts precursor chemicals or substances with drug related effects or substances used in the process of manufacturing drugs of the quantity specified under this section, commits an offence and upon conviction* ***shall be*** *liable to imprisonment for a term of* ***thirty years.*** *(Underline is mine).*

The expression **"shall"** as used in the wording of the above provisions of the law, from its contextual viewpoint, it confers mandatory function which is to be performed as far as the interpretation enshrined under section 53 (2) of **The Interpretation of Laws Act [Cap.1 R.E. 2019]** is concerned. On those premises, I agree with the learned State Attorney that the sentence imposed against the appellant to serve thirty (30) years imprisonment was proper notwithstanding the appellant being the first offender.

In the event, I accordingly dismiss the appeal in its entirety for it is devoid of merit. **It is so ordered.**

DATED at **MOROGORO** this **23rd November, 2021.**

M. J. CHABA

JUDGE

23/11/2021

Judgement delivered at my hand and Seal of this Court in Chamber's today on the 23rd day of November, 2021 in the presence of the appellant who appeared in person via video link / conference from Isanga Prisons, unrepresented, and Ms. Vestina Masalu, learned State Attorney who entered appearance for the Respondent Republic.

M. J. CHABA

JUDGE

23/11/2021

Rights of the parties have been explained.

M. J. CHABA

JUDGE

23/11/2021