

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

CRIMINAL APPEAL NO. 9 OF 2022

(Originating from Criminal Case No. 43 of 2020 of the Bariadi District Court)

MWANJIA MAGABEAPPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

9th May, 2022

MKWIZU J:

At the district Court of Bariadi at Bariadi, appellant was tried for and convicted of illicit trafficking of narcotic drugs contrary to section 15A(1) of the Drugs Control And enforcement Act, No 5 of 2015 as amended by section 9 of Act No. 15 of 2017 . The particulars of the offence were detailed that appellant was on 8/2/2020 at Lukungu area within Busega District in Simiyu Region, found unlawfully conveyancing 16.727 kilograms of Khat Commonly known as Mirungi from Musoma to Mwanza while boarding on Zakaria Bus with registration No T 908 DLJ. At the end of the trial, appellant was found guilty and after conviction, was sentenced to a custodial sentence of 30 years.

Aggrieved with both, the conviction and sentence, she is now before this Court by way of appeal armed with five (5) grounds of appeal summing up to one complaint that the prosecution case was not proved beyond reasonable doubts.

At the hearing of this appeal the appellant was present in person and the respondent/Republic had the service of Mr. Nestory Mwenda learned State Attorney. Appellant had nothing to say, she left the matter to the court for decision. When invited to respond to the grounds of appeal, the learned State Attorney readily conceded to the appeal on the ground that all documentary evidence namely certificate of seizure(exhibitP1); weight measurements reports(exhibitP2); Government Chemist reports (exhibit P3) and Chain of Custody Form (exhibit P4)tendered by the prosecution were admitted without their contents read out before the court contrary to the laid down procedures. Citing the case of **Issa Hassan Uki V R**, Criminal Appeal No 129 of 2019 CAT (Unreported) the learned State Attorney argued that that omission is fatal and he implored the court to expunge them from the records.

The learned State Attorney went further to submit that, appellant is charged with illegal trafficking of narcotic drugs, and therefore having expunged the documentary evidence including the Government Chemists reports that establishes the nature of the substance found with the appellant, there is nothing in the records that would stand to establish that whatever was found with the appellant was a narcotic drug as alleged. He said, though PW5 tendered in court statements of the driver and conductor of the Bus in which the appellant is alleged to have boarded on the material date, the said statements were again not read out in court leaving the entire evidence weak to ground the appellant's conviction.

Indeed, the appellant appeal is meritorious for the reasons stated by the learned State Attorney. As rightly observed, contents of the prosecutions

documentary evidence were not disclosed to the appellants after their admission. Exhibit P1 is a certificate of seizure admitted at page 16 of the records without reading out its contents to the appellant to avail him opportunity to challenge its contents. The same omission was repeated at page 27 when the trial magistrate admitted in evidence *Taarifa ya Uzito wa Majani ya mimea idhaniwayo kuwa ni Mirungi* as exhibit P2 and so to exhibit P3, Government Chemistry report and chain of custody form (exh P4). That was a fatal irregularity as held by the Court of Appeal in the cited decision of **Issa Hassan Uki V R** (Supra), **Robinson Mwanjisi and 3 others V. Republic** (2003) TLR 218 to mention just a few that the document must be read out to reveal its contents to the accused person after its admission. This procedure was not followed on the admission of the above exhibits thus liable to be expunged from the records as suggested by the state attorney as I hereby do.


The next question is whether the remaining evidence is strong enough to establish the appellants culpability. Having expunged all the documentary evidence from the records, the rest of the prosecution evidence is on the arrest of the appellant given by PW5. As correctly submitted by the State Attorney, PW5 is a police officer who according to the records tendered before the court the statement of the conductor and the driver of the Bus in which the appellant is said to have boarded on the material date and time. The statements were to establish how the appellant came into the hands of justice and what she was exactly found with. However, the admission of two statements falls short of the criteria's set in the two cited case above. Like the other exhibits, they are hereby expunged from the records. That done, there is no evidence on the records to establish the offence of illicit trafficking of narcotic drugs as the evidence showing the

substance retrieved from the appellant and its nature has been taken aware by the pointed-out irregularity.

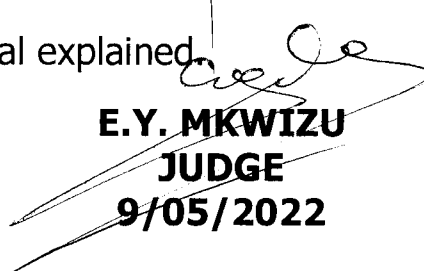
That said, I allow the appeal, quash conviction, and set aside the sentence meted against the appellant. Appellant is to be release from custody forthwith unless otherwise lawful held.

Order accordingly.

DATED at Shinyanga this 9th day of May 2022.


E.Y. MKWIZU
JUDGE
9/05/2022

COURT: Right of appeal explained.


E.Y. MKWIZU
JUDGE
9/05/2022