

**IN THE HIGH COURT OF TANZANIA**

**MTWARA DISTRICT REGISTRY**

**AT MTWARA**

**CRIMINAL APPEAL CASE NO. 42 OF 2022**

*(Originating from Nachingwea District Court in Criminal Case No. 108 of 2021 at Nachingwea)*

**HAMISI ABDALLAH MNUNDUMA ..... APPELLANT**

***VERSUS***

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

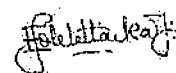
**JUDGEMENT**

*26/9/2022 & 31/10/2022*

**LALTAIKA, J.**

The appellant herein **HAMISI ABDALLAH MNUNDUMA** was arraigned in the District Court of Nachingwea in Nachingwea charged with Trafficking in Narcotic Drugs c/s 15A(1) and (2)(c) of the Drug Control and Enforcement Act No 95 of 2019.

It was alleged that on 2nd day of October, 2021 during the nighttime at Chiganga Village within Nachingwea District in Lindi Region the appellant was found unlawfully trafficking in 26 kilograms of narcotic drugs *cannabis sativa* commonly known as bhangi by using a motorcycle with Registration MC 968 BQJ and chassis No. LBRSPJB 53H9007451 make SANLG.



When the charge was read over and explained to the appellant, he pleaded guilty. Consequently, the court convicted him as charged and sentenced him to serve a term of 30 years in prison.

Dissatisfied and aggrieved with both conviction and the sentence, the appellant has appealed to this court on the following grounds:

- (i) *That, the trial court erred in law and fact in convicting and sentencing the appellant even taking consideration the admitted facts, the plea was imperfect, ambiguous or unfinished and for that reason, the lower court erred in law treating it as plea of guilty.*
- (ii) *That, the trial court erred in law and fact in convicting and sentencing the appellant in holding that appellant pleaded guilty without considering that no caution statement was tendered before the court to be used as exhibit.*
- (iii) *That, the trial court grossly erred in law and in fact in convicting and sentencing the appellant holding that it was own plea of guilty without considered that procedure used governing investigation was improper.*
- (iv) *That, the trial court erred in law and fact in convicting and sentencing the appellant without considering that no government Chemist Analysis Report tendered as an exhibit before the court.*

On 04/07/2022 the appellant filed three additional grounds which I take liberty to reproduce as follows: -

- (i) *That the learned trial Magistrate erred in point of law to deny the appellant his right to bail by regarding the offence that the appellant was alleged to commit is unbailable (see page 2 of the court records) while offence it is bailable.*
- (ii) *That the learned trial Magistrate court erred in law and fact by convicting and sentencing the appellant basing on exhibit*



*"Hati ya ukamataji mali" while was not read before the court as per section 210(3) of the Criminal Procedure Act.*

- (iii) *That the learned trial Magistrate erred in law by convicting and sentencing the appellant while the records of the court does not reflect the language used to explain the charge /facts to the appellant.*

When the appeal was called on for hearing, the appellant appeared in person, unrepresented. The respondent Republic, on the other hand, was represented by Mr. Wilbroad Ndunguru, Senior State Attorney.

The appellant, not being learned in law, had nothing to add to his petition. He therefore prayed that the senior State Attorney be allowed to submit first, and he would, if need be, address some issues in rejoinder.

It was Mr. Ndunguru's submission that he was not supporting the appeal. Arguing against the 1<sup>st</sup> and 3<sup>rd</sup> grounds of appeal, the learned Senior State Attorney averred that since the appellant had pleaded guilty, it is the requirement of the law as per section 360(1) of the Criminal **Procedure Act CPA Cap 20 RE 2022**, that no appeal is available against conviction but only a sentence if the accused had pleaded guilty. In this case, Mr. Ndunguru averred, the appellant is appealing against the conviction. Having gone through the records, the learned Senior State Attorney argued, he was satisfied that the plea was unequivocal. Mr. Ndunguru referred this court to page 6 of the proceedings of the trial court where the appellant prayed to enter a plea of guilty.

Addressing the court with even more details, Mr. Ndunguru stated that a plea is said to be unequivocal where one pleads guilty to both the charge



and facts of the case. In the instant matter, averred the learned Senior State Attorney, it shows that the court did its best to record the proceedings and that the plea is unequivocal. The learned counsel insisted that even though proceedings appeared in English, the court was conducted in Kiswahili. To that end, the learned Senior State Attorney prayed that the first and third grounds of appeal be dismissed for lack of merit.

Moving on to the 2<sup>nd</sup> ground of appeal, Mr. Ndunguru conceded that indeed the exhibit was not tendered out in court. However, Mr. Ndunguru reasoned, since the appellant had confessed (pleaded guilty) it was unnecessary to produce the exhibit. The learned Senior State Attorney concluded that the ground of appeal had no merit and prayed that it is dismissed.

On the 3<sup>rd</sup> of the original grounds, Mr. Ndunguru averred that upon pleading guilty in court, the court proceeds to convict the accused person as the evidence becomes watertight. Moreover, the learned Senior State Attorney added, a plea of guilty prevents the court from going ahead to question how the accused was arrested, his evidence and the rest of the procedure. The learned Senior State Attorney emphasized that a plea of guilty is taken to bar the court in other word the court is "estopped" from proceeding with the rest of procedures. He prayed that the ground is dismissed for lack of merit.

Moving on to the fourth ground of appeal Mr. Ndunguru reminded this court that the appellant complains that the Chief Government Chemist



Report was not tendered in court. The learned Senior State Attorney clarified, to the appreciation of this court, that the appellant meant **The Government Laboratory Analysis Report Form Number DCEA 009**. Mr. Ndunguru was quick to point out that it was equally unimportant to submit this report because the charge was on bhangi, and the accused had pleaded guilty to bhangi. The plea, argued Mr. Ndunguru, was sufficient to warrant conviction. He prayed that the 4<sup>th</sup> ground is also dismissed.

Moving to the additional grounds, the learned Senior State Attorney stated that the appellant's complaint is that he was denied his right to bail. It is Mr. Ndunguru's submission that Section 29(1)(b) of the **Drug Control and Enforcement Act**, states clearly that bail is not available for persons accused of trafficking in narcotics exceeding 20 kilograms. The appellant was arrested while trafficking 26 kilograms, averred the learned Senior State Attorney. Therefore, Mr. Ndunguru reasoned, the court was justified in denying bail hence the ground has no merit.

On the last ground which is the 2<sup>nd</sup> ground of the original grounds, the learned State Attorney reminded this court that the same was centered on faulting admission of the certificate of seizure. Mr. Ndunguru agrees with the appellant that the certificate of seizure was not read out loud in court before it was admitted. As a result, reasoned the Senior State Attorney, the same should be expunged from the court records.

Nevertheless, Mr. Ndunguru emphatically interjected, since the appellant had pleaded guilty, there was no need to produce the exhibits. The



learned counsel averred that the expunging of the exhibit from the evidence would not affect the conviction and sentence meted out. To support his argument, the learned Senior State Attorney referred this court to the case of **Joel Mwangambako vs R. Crim App 516 of 2017 CAT, Mbeya.**

On the issue of sentence, Mr. Ndunguru opined that this court could reduce the sentence imposed. The learned Senior State Attorney insisted that although the Drug Control and Enforcement Act Citing section Cap 95 RE 2019 (by then), provides for *imprisonment for a term of 30 years* it is his reasoned opinion that 30 years term is the maximum sentence. The court, averred Mr. Ndunguru, can order any type of sentence, be it jail or an alternative sentence. However, reasoned the learned Senior State Attorney, since the amount of bhangis was big and that bhangis is harmful both to the appellant and others, and taking into consideration government policy on drug issues, this court could order a reasonable sentence to deter commission of such offences.

To conclude his submission, the learned Senior State Attorney advised that this court could also consider alternative punishment depending on the nature and gravity of the offence. He referred this court to the Court of Appeal decision in **SOKOINE MTAHALI @CHIMONGWA vs R. Crim App. 459 of 2018 CAT, Moshi 23<sup>rd</sup> September 2022**

In a brief rejoinder, the appellant focused mainly on his purported plea of guilty. The appellant averred that when he was arraigned in court the charge was read over to him and he denied wrongdoing. He averred further



that he was sent to remand prison on the pretext that hearing of his case had to wait for the chief government chemist's report. While in prison, the appellant asserted, a "government lawyer" whose name he could not recall visited him and insisted that that he pleads guilty to the offence or else the lawyer would make his life unbearable ***"Usipokubali kosa, kitu nitakachokufanyia utaona dunia hii ni chungu."*** The appellant averred that he was too scared that he decided to go by that advice, he pleaded guilty.

On the 19<sup>th</sup> of January, recalls the appellant, he was not told that it was judgement day. Upon arrival in court the Public Prosecutor and the Magistrate started speaking English and laughing. Suddenly, averred the appellant, he was sentenced to 30 years in prison.

I have dispassionately considered submissions by both parties. The learned Senior State Attorney has pleaded with this court to reduce the sentence of 30 years meted to the appellant. I must admit on the outset that this advice is highly appreciated. Nevertheless, I think the advice does not rhyme with the specific circumstances of this appeal. Reduction of sentences is employed by a court of justice where the prosecution case has been proved beyond reasonable doubt. Reduction of sentence is irrelevant where the prosecution case is half cooked as it is in the instant case.

To start with, I have made a thorough analysis of the purported plea of guilty. Although this could warrant retrial, I think the appeal fails for other reasons as will be expounded shortly. Be it as it may, I find it very difficult

*Hokulata*

to accept that the appellant unequivocally pleaded guilty and instead of being convicted as charged he was sent to remand prison where he would spend several months before he was finally sentenced to thirty years imprisonment. In the case of **Adan v. R. [1973] E.A. 445** the erstwhile Court of Appeal for East Africa held that

*"The danger of a conviction on an equivocal plea is obviously grievous where the accused is unrepresented, is of limited education and does not speak the language of the court."*

The trial court should have warned itself before accepting the plea of guilty of the accused. As he lamented in this court, the prosecutor and the magistrate were speaking English while laughing and suddenly it was announced that he was sentenced to serve 30 years in prison.

I should also point out that although the prosecution had alleged that the appellant was found unlawfully trafficking in 26 kilograms of narcotic drugs cannabis sativa commonly known as bhanghi by using a motorcycle with Registration MC 968 BQJ and chassis No. LBRSPJB 53H9007451 make SANLG, the appellant consistently asserted that he was merely a pillion passenger. No efforts whatsoever were made to link him up with the motorcycle. This reduces the prosecution evidence to mere circumstantial.

It is trite law in our jurisdiction that for circumstantial evidence to warrant conviction there must be a direct link between the evidence and the offence. The inculpatory facts must not be capable of any other interpretation than that the person in the dock is guilty of the offence charged. See **Shabani Abdallah v. The Republic**, Criminal Appeal No.127



of 2003, CAT and **Seilf Seleman v. Republic**, Criminal Appeal No. 130 of 2005, CAT (both unreported). If I order retrial to ascertain unequivocality of the plea, it would be tantamount to allowing the prosecution to repackage their evidence to the detriment of the accused. I also cannot opt for reduction of sentence because the available evidence is incapable of grounding conviction in the first place. Premised on the foregoing reasons, I find that this appeal is meritorious.

Before I pen off, I am inclined to state that pleading guilty to an offence is not a permanent deprivation of one's right to the due process of law at an appellate stage. An appellant, whether he pleaded guilty or not, is entitled to pock holes to the prosecution evidence as widely as he possibly can subject only to the relevant provisions of the procedural laws governing appeal. One's previous record of pleading guilty should not be used by the respondent republic, whether by default or by design, to silence or any how limit the appellant's freedom to fight for his innocence.

In the upshot, I allow this appeal. I quash the conviction and set aside the sentence of thirty years imprisonment. I hereby order that **HAMISI ABDALLAH MNUNDUMA** be released from prison forthwith unless he is held for a lawful cause. It is so ordered



**E.I. LALTAIKA**

A handwritten signature in dark ink, appearing to read "E.I. Laltaika".

**JUDGE  
31/10/2022**

A second handwritten signature in dark ink, appearing to read "E.I. Laltaika".

**Court**

This judgement is delivered under my hand and the seal of this court this 31<sup>st</sup> day of October 2022 in the presence of Mr. Enosh Gabriel Kigoryo, State Attorney and the appellant who has appeared in person, unrepresented.



**E.I. LALTAIKA**

*E.I. Laltaika*

**JUDGE**

**31/10/2022**

**Court**

The right to appeal to the Court of Appeal of Tanzania is duly explained



**E.I. LALTAIKA**

*E.I. Laltaika*

**JUDGE**

**31/10/2022**

*E.I. Laltaika*