

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**DAR ES SALAAM DISTRICT REGISTRY**

**AT DAR ES SALAAM**

**CRIMINAL APPEAL NO. 143 OF 2023**

*(Appeal from the decision of the District Court of Ilala at Kinyerezi, Dar es salaam,  
given before Hon. KIHAWA -PRM dated on 6<sup>th</sup> day of April 2023)*

**KHAMIS LUGANO@MONGA ..... APPELLANT**

**VERSUS**

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

**JUDGMENT**

**MKWIZU, J:**

The appellant was charged with the offence of Unlawful Possession of Prohibited Plants contrary to section 11(1)(d) of the Drugs Control and Enforcement Act No. 5 of 2015[Cap 95 R: E 2019]. The appellant is alleged to have been found in possession of prohibited plants namely Cannabis sativa commonly known as “Bhangi” weighing 6.72 kilograms at the Baggage room, the port area within Ilala District in Dare es Salaam Region on the 18<sup>th</sup> day of May 2021.

The prosecution’s story was narrated by PW3 a police officer of Bandari, who worked at the port luggage to Zanzibar inspection point. While on her duties with Felishe Mathias, they suspected the appellant’s luggage and arrested the appellant and his fellow. Upon inspection and search witnessed by PW5, they found the suspected luggage with leaves suspected to be prohibited plants namely Cannabis sativa commonly

known as "Bhangi. The impounded substances were taken to a Government Chemist where PW2 certified that indeed the same were narcotic drugs by the name of Bhangi weighing 6.72 kgs. Upon completion of the investigation, the appellant was arraigned before the District Court of Ilala at Kinyerezi where he pleaded not guilty. Seven witnesses testified for the prosecution. At the conclusion of the trial, the trial court convicted the appellant of the charged offence and sentenced him to thirty (30) Years imprisonment.

Being dissatisfied with both conviction and sentence he has preferred this appeal based on fourteen (14) grounds of appeal which essentially challenge the trial court decision for failure to observe the chain of custody of exhibit P2 and that the prosecution case was not proved beyond reasonable doubt.

The hearing of the appeal was conducted through written submissions. The appellant was in person without legal representation. His written submissions are basically a request to the court to allow the appeal for failure by the prosecution to prove the case to the required standards. I will for that reason not replicate his submissions here.

Mis. Gladness Senya, the learned State Attorney who appeared for the respondent also supported the appeal on the ground that the charge against the appellant was not proven. The learned State Attorney submitted that the appellant was convicted on a defective charge sheet. That the appellant was charged with the offence of unlawful possession of prohibited plants contrary to section 11(1) of the Drugs Control and Enforcement Act [Cap 95 R: E 2019] while PW1, PW2, PW3, PW4, PW5, PW6, and PW7 testimonies refer to Narcotic Drugs, and not the

possession of the prohibited plant as indicated in the charge sheet. To her, the variance between the charge and the evidence adduced in court renders the appellant not knowing the nature of the case facing him and she on this referred the court to the case of **Musa Mwaikunda Vs Republic** [2006] TLR 387 which provides that;

*“The principle has always been that an accused person must know the nature of the case facing him. This can be achieved if a charge discloses the essential element of an offence”*

She invited the court to find that the charge was fatally defective.

In relation to non-observance of the chain of custody, the learned State Attorney said, there is a missing link from when PW1 took the said narcotic drugs exhibit(P2) from PW7 for him to tender it in court on 21/03/2022 bringing uncertainty as to whether the same substances impounded from the appellant are the same substances that were tendered and admitted in court as exhibit.

I agree with the learned State Attorney particularly on the issue of the faulty chain of custody of the main exhibit in this case. As the records would reveal, exhibit P1, the prohibited plants (Bhangi) were impounded by PW3, PC Sharifa of Police Bandari in collaboration with Felishe Mathias, machine operator of the luggage room. The exhibit was according to PW3 handled by PW4 the in charge of the charging section on that material date. PW4 handled the exhibit to PW6 who again took the exhibit to the exhibit Keeper Pw7. PW7 handled the exhibit to Pw1 for taking them to the government chemist for investigation. The complication here is that, apart from the fact that exhibit P2 was tendered in court by Pw1, PW5 the person who witnessed the search, PW3, who received the exhibit immediately after it was confiscated, PW4 and PW6 who were

involved in the process were not led before the court to identify the said exhibit as the same exhibit that was handled to them during the investigation process. In fact, even PW1 doesn't explain how he got the exhibit on the date he tendered it in court as an exhibit. Undoubtedly, the broken chain of custody here raises doubt as to whether the admitted exhibit P2 is the same parcels that were found with the appellant on the material date.

With the anomalies identified above, I agree with both the appellant and the learned State Attorney that the prosecution case was not proved beyond reasonable doubt. Consequently, the appeal is allowed, the Appellant's conviction is quashed, and the sentence is set aside. The appellant is to be released from prison forthwith unless otherwise lawfully held.

**DATED** at **DAR ES SALAAM** this 22<sup>ND</sup> day of **September** 2023.



***E. Y Mkwizu***  
***Judge***  
***22/9/2023***