IN THE HIGH COURT OF TANZANIA

(MOROGORO DISTRICT REGISTRY)

AT IJC MOROGORO

CRIMINAL APPEAL NO 59 OF 2023

(ORIGINAL CRIMINAL CASE NO 17 OF 2023, MOROGORO, RM'S COURT, LYAKINANA PRM) DATED 31ST AUGUST 2023)

AWADHI HAMZA MOHAMED.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

DATE OF JUDGEMENT- 11TH /12/2023
LATIFA MANSOOR J

The Accused person, AWADHI HAMZA MOHAMED was prosecuted with the Offence of Trafficking in Narcotic Drugs contrary to Sections 15A (1) (2c) of the Drugs Control and Enforcement Act, Cap 95 R: E 2019.

It is alleged by the prosecution that on 22nd February 2022, at Chogoali Village within Gairo District in Morogoro Region, the accused person was caught with 34.64 kilograms of cannabis sativa commonly known as Bhangi.

Briefly, the facts of the case as alleged by the prosecution are that the police were tipped by the informer that the accused herein is dealing in the business

of trafficking of narcotic drugs. On 22/12/2022, a team of investigators including A/Insp Innocent Masangule, an officer from Drugs Control and Enforcement Authority (PW2) and A/Insp Lazaro Muhegela (PW5), a police officer also from Drugs Control and Enforcement Authority Dar es Salaam travelled to Morogoro at Dumila Area in Chagoali Village, in Gairo District, they asked the Chairman of the Village one George Mbega to accompany them for searching the house of the accused. They went to the house, they found the accused in the house, they searched the house and found two sulphate bags containing seeds and grasses suspected to be bhangi. The drugs were seized by the police investigators in the presence of the village chairman. The accused, was arrested and taken to police where his statement was recorded, wherein the accused confessed to have been found with two bags containing bangi. The two bags containing the bhangi were marked with police labelling numbers, the two bags were marked A, and B, and the techno phone was marked C. Then the two bags were taken to Dar es Salaam, Anti-Drug Unit, and there they were handed over to Inspector Johari Msinkali (PW3), who is the exhibit keeper of Anti-Drug Unit, Dar es Salaam. At ADU, the exhibits were marked with No. DCA/MOR/IR/03/2022 Then, on 27/12/2022 Detective Coplo Seleman Mbwambo took the exhibits

to the Chief Government Chemistry for testing. The two bags were weighed, and it was 34.64 kgs. The samples were tested by the Chief Chemist in the presence of Afande Seleman Mbwambo. The Chief Chemist confirmed that all the two bags contained drugs of cannabis sativa "bhangi". Then the exhibits were repacked and handed over to ADU. On 26 April 2023, the exhibits were handed over to Afande Masangula who exhibited them in court. Afande Masangula testified in Court as PW2, the two bags of bangi were received in court as exhibit P3.

The accused person was interrogated by the police, and he recorded his confessions before the Assistant Inspector Lazaro Muhegele (PW5) who tendered the cautioned statement in court, there was no objection of its admissions, and the cautioned statement was received as exhibit P7, and the additional cautioned statement of the appellant was also received in court as Exhibit p8.

The accused person denied having committed the offence, and in his defense he said while it is true that the two bags of bhangi were seized from his house but he does not know who has kept them in his house. He also denied having recorded his statement at the police station freely, he claimed to have

been tortured. Generally, the accused denied having been found with bhangi, and claims that he was framed. He claimed that he is innocent and prayed for his acquittal.

The trial court, after receiving the evidence of the prosecution and that of the defense found that the case for the prosecution was proved beyond reasonable doubt and found the accused guilty of the offence charged, he was convicted and sentenced for imprisonment for a Term of 30 Years.

The accused/appellant was aggrieved, he filed the appeal raising 16 grounds of appeal:

1. The charge and facts of the case was read in the language which was ambiguous, and he failed to understand the charge and the facts of the case.
2. The arrest of the accused by the officers from Dar es Salaam without involving the police officers from Morogoro was faulty;
3. The Trial Magistrate erred in relying on the evidence of PW2 to convict the appellant while PW2 was not an officer in charge of a police station nor did he have any written authority from the OCS of the area to execute the search.

4. The search was conducted contrary to the provisions of section 38 (1) and (2) of the Criminal Procedure Act, read together with para 1 (a, b, c) and para 2 (a and b) of the Police General Orders (PGO), and section 32 (4 and 5) of the DCEA, Cap 95 R: E 2019;
5. The search was in violation of Section 40 of the CPA, Cap 20 R: E 2022;
6. The Trial Magistrate erred for relying on Certificate of Seizure (Exh. P5) which was obtained on an unlawful search;
7. The search and seizure was irregular as the appellant was not issued with a receipt acknowledging the seizure as required by section 38 (3) of CPA;
8. Section 169 (1) and (2) of CPA was not observed by the Trial Magistrate;
9. The prosecution case was based on lies and material contradictions;
10. There was no proof that the two houses from which the drugs were seized belonged to the appellant;
11. The Additional Cautioned Statement (Exh P8) was recorded outside the prescribed period of Four Hours;
12. The Trial Magistrate erred for relying on exhibit P9, as the

prosecution could not prove that the person who gave the statement (p9), could not be found;

13. The Trial Magistrate erred in relying on Exhibit P6, court exhibit register, which was a photocopy;

14. The chain of custody of the two bags containing the bhangi was broken;

15. The Trial Magistrate did not accord weight to the defense evidence who was a layperson and unrepresented;

16. The prosecution case was not proved beyond peradventure;

The appeal was argued by written submissions, the appellant was represented by Advocate Ignas Punge, while the State was represented by the Learned State Attorney Josbert Kitale.

The learned Advocate representing the appellant dropped grounds 1, 9 and 10, and submitted jointly on grounds 2 and 3, grounds No 4, 5,6,7 and 8 were argued jointly, and grounds 11,12,13,14, 15 and 16 were argued separately.

Grounds 2 and 3, was on seizure of the two bags of the cannabis sativa. The Counsel argues that search under section 38 (1) of CPA must be preceded by a written authority of a police officer in charge of a police station (search order), or by the court (search warrant). The Counsel argues that the Police Officer from Dar es Salaam (PW2) conducted a search in Morogoro, Gairo without Warrant of Arrest contrary to Section 38 (1) of the Criminal Procedure Act, and since PW2 was not the police officer in charge of a police station at Gairo, he ought to have procured a Search Warranty before conducting a search and arrest. The counsel for the appellant argues that the arrest and search conducted by PW2 was illegal as it was done without authorization.

On grounds 4, 5, 6, 7 and 8, the counsel argues that all the four grounds are centered on procedures on collection and admission of evidence. The Counsel repeated his arguments on ground 2 and 3 above that PW2, the Police Officer from ADU did not have a search warrant or authorization from the police in charge. That the police officer who searched the premises was duty bound under section 38 (3) of CPA to issue to the appellant a receipt which bears the signature of the owner of the premises and the signature of

the witness of the search. The Counsel seems to argue that there was no seizure note issued after seizing the two bags of banghi.

On ground No 11, the counsel argues that the additional statement of the accused (exhibit p8) was recorded outside the prescribed period of four hours, that the accused/appellant was arrested on 21/12/2022 within Gairo District, and he was transported to Dar es Salaam the next day on 22 /12/2022, and his statement was recorded at Dar es Salaam by Inspector Lazaro Muhegele (PW5) on 22/12/2022, the Counsel argues that there was a violation of section 51 (1) (a) and (b) of CPA. To buttress his arguments, the counsel cited the case of **Janta Josseph Komba and 3 others vs Republic, Criminal Appeal No 95 of 2006, Court Appeal** held that since the appellants were under the custody of police for a long time, they were not free agents and they could not have recorded their statements freely. The Court of appeal had held that "*the obtaining of the statements of the appellants while still under custody outside the time provided under the law for investigative custody contravened the provisions of the law*"

The Counsel also argues that since the appellant was under police custody and recorded his statement while in the custody of the police, his statement was not freely and voluntarily given. He also referred the court to the case of **Janta Joseph Koba** (supra).

On Ground 12, the Counsel argues that there was violation of the requirements of Section 34B (2) of the Evidence Act, Cap 6 R: E 2022, he said Exhibit P9, (the statement of the independent witness Mzee Gorge Mbega) which was admitted under Section 34B of the Evidence Act was short of all the requirements of section 34B of the Evidence Act. The Counsel refers to the case of **DPP vs Orphant Monyacha (1985) TLR 127**, in which it was held as follows:

> *"the provisions of section 34B (2) are cumulative and all paragraphs (a) to (f) must be satisfied. Hence to admit the statement, it must be reasonably impracticable to call the deponent; the statement must have been signed by him; it must contain a declaration on liability for perjury; a copy must have been previously served on the accused; the accused must have failed to serve a notice of objection within ten days; and where the deponent cannot read, it must be accompanied*

by a declaration of the person who read it to the effect that it was so read. In this case the first two requirements only were satisfied. The statement was then inadmissible.

The Counsel did not say as to what were the shortfalls in the admissions of Exhibit P9, and which requirement of Section 34B was not complied with by the prosecution when tendering and admitting this exhibit.

On ground 13, that exhibit P6, the Court Exhibit Register was a photocopy, and that it was wrong for the Trial Court to admit it, and to rely on it in its findings. That the procedures under section 67 and 68 of the Evidence Act for production of a photocopy was not complied with. Again, the Counsel did not say exactly what subsection of section 67 and 68 of the Evidence Act was not complied with when admitting the secondary evidence, hence this ground is short of details and cannot be determined by the Court. In any case, as held by the Court of Appeal in the case of **William Maganga @ Charles vs Republic, Criminal Appeal No 104 of 2020** (unreported), the proof of a fact can be made by oral account of the witnesses who handled the exhibits. As long as there was a witness who handled the register and

testified in court that he was the one who handled the register, the admission of secondary evidence, if at all, was in violation of section 67 and 68 of the Evidence Act, did not affect the fact that the register existed. Again, an objection on admission of an exhibit ought to have been taken during trial.

Ground No. 14 was on chain of custody of exhibit P3, the two bags of cannabis sativa (bhangi). That the bags were seized in Gairo and transported to ADU Dar es Salaam. That they were seized on 21/12/2022 and transported to Dar es salaam on 22/012/2022, and that PW2 kept the bags under his custody until 23/12/2023 when he handed the bags to ADU exhibit keeper (PW3). He said there was a possibility of tempering of the exhibit by PW2 who kept them at his office until 23/12/2022. On this, he cited the case of **William Maganga @ Charles vs Republic, Criminal Appeal No. 104 of 2020 (unreported),** in which the court departed from its earlier decision of **Paul Maduka and 4 others vs Republic Criminal Appeal No. 110 of 2007**, and held that " *paper trail showing the seizure, custody, control, transfer, analysis and disposition of nan exhibit seized from the accused can be proved not just by production of documentation but also by oral accounts of the witnesses who handled the exhibit after its seizure".*

On ground No. 15, the counsel argues that the evidence of the appellant was not considered but rather it was flouted. He says there is nowhere in the judgement of the Trial Court that shows that the Magistrate has endeavored to consider the evidence of the defense. On this, the Counsel referred to the case of **Hussein Idd and another vs Republic, (1986) TLR 166,** Court of Appeal held that *"it was a serious misdirection on part of the Trial Judge- to deal with the prosecution evidence on its own and arrive at the conclusion that it was true and credible without considering the defense evidence"*

On ground 16, the counsel alleges that the prosecution failed to prove the case beyond reasonable doubt, and referred the court to the case of **Jonas Nkize vs Republic (1992) 213**, it was held that *"the general rule in criminal prosecution that the onus of proving the charge against the accused beyond reasonable doubt lies on the prosecution, is part of our law, and forgetting or ignoring it is unforgivable, and is a peril not worth taking."*

I have carefully considered the submissions filed by the Advocate for the appellant, and the submissions filed on behalf of the State. The first issue to

consider is the arrest of the appellant by the police officer from Dar es Salaam, without authorization, and contrary to section 38 (1) of CPA.

The case of the prosecution as deponed by its Six witnesses and Nine exhibits is that on 21st December 2022, the Police Officers, Innocent Masangula (PW-2) searched the house of the appellant. PW2's team comprised of one more officer, who is afande Seleman Mbwambo (PW6), and one independent witness Mzee George Mbega, the leader of the neighborhoods who joined them. The team disclosed their identity, and the premises were searched. The accused person did not decline to be searched. When the house was searched, they found two sulphate bags containing 34.64 kilograms of bhangi. The two bags were seized, and a seizure note was completed by the seizing officer and the independent witnesses. The seizure memo in triplicate was prepared on which the independent witness and the accused also signed. The consignment and a techno phone were marked and taken to Dar es Salaam, at ADU. Then the bags were taken to Dar es Salaam to the Chief Government Chemist, and samples from bag were taken and marked and labelled. The results were positive that indeed the contraband is drugs of cannabis sativa. The issue to be discussed is whether section 38 (1) was violated by the seizing officers;

It is true that the premises were searched by the police and two bags of the drugs were recovered. The search was done in the presence of the independent witnesses, whose statement was admitted in court under Section 34B of the Evidence Act, and which confirmed that he witnessed the search and seizure, and the two bags of bangi were recovered from the premises. Therefore, the search and seizure were done, and it was done as required by the provisions of section 38(3) of the Criminal Procedure Act, Cap 20 R: E 2002. As to whether the searching officers required a search warrant or an authorization to conduct a search, I find it necessary to reproduce herein the provisions of section 38 (1) of CPA, this section reads:

38.-(1) Where a police officer in charge of a police station is satisfied that there is reasonable ground for suspecting that there is in any building, vessel, carriage, box, receptacles or place

a) Anything with respect to which an offence has been committed;

b) Anything in respect of which there are reasonable grounds to believe that it will afford evidence as to the commission of an offence;

c) anything in respect of which there are reasonable grounds to believe that it is intended to be used for the purpose of committing an offence;

d) anything in respect of which there are reasonable grounds to believe that it is intended to be used for the purpose of committing an offence;

and the officer is satisfied that any delay would result in the removal or destruction of that thing or would endanger life or property, he may search or issue a written authority to any police officer under him to search the building, vessel, carriage, box, receptacle or place as the case may be.

Police officer in charge has been defined under section 2 of CPA to mean, "officer in charge of a police station" includes any officer superior in rank to an officer in charge of a police station and also includes, when the officer in charge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to that officer and is above the rank of constable or, when the Minister for the time being, responsible for home affairs so directs, any police officer so present;

The police officers who went to Gairo to search the premises of the appellant were of the rank above constable, they were Assistant Inspectors and they

say they were authorised by the police officer in charge of ADU, Dar es Salaam to search the house of the appellant after being informed by an informer that the appellant is dealing in the business of trafficking narcotic drugs. The police officers were authorised under section 38 (1) to search the house as they were satisfied that there was a danger of removal or destruction of the drugs.

Apart from section 38(1) of CPA, the searching and seizing officers are permitted under the Drugs Control and enforcement Act, Cap 95 R: E 2019, to enter and search any building, conveyance or place in which they have reason to believe that any narcotic drug or psychotropic substance in respect of which an offence punishable under the law has been committed, is kept or concealed, Section 48 of Cap 95 empowers certain officers to enter, search, seize and arrest without warrant or authorization. Such officer, if he has reason to believe from personal knowledge or information, that any offence has been committed, he may enter into and search in the manner prescribed thereunder between sunrise and sunset. He can detain and search any person if he thinks proper and if he has reason to believe such person to have committed an offence punishable under the Act. Under the Act, such officer may also enter and search a building or conveyance

provided he has reason to believe that search warrant or authorization cannot be obtained without affording opportunity for concealment of the evidence or facility for the escape of an offender.

Where there is a conflict in two legislations, i.e. CPA and Drugs Control and Enforcement Act, Cap 95, the provisions of the later legislation shall take precedence, this is provided under Section 48 (6) of Cap 95 as follows:

> 6) Where there is a conflict between the provisions of this section and those of the Criminal Procedure Act on matters provided for, the provisions of this Act shall prevail.

This is a general provision under which the provisions of Code of Criminal Procedure are made applicable to warrants, searches, arrests and seizures under the Act, and in case of conflict, the Drugs Control and enforcement Act prevails.

In this case the authorized police officers from ADU did not proceed to act under the provisions of Cap 95 after having necessary information. The searching and seizing officer after having reasons to believe that the drugs would have been removed or concealed, the search, seizure and arrest carried out by them were obviously under the provisions of the Criminal

Procedure Act. In any case, as provided in Section 48 (6) of Cap 95, the provisions of Criminal Procedure Act shall apply insofar as they are not inconsistent with the provisions of the Drugs Control and Enforcement Act, Cap 95, to all warrants issued and arrests, searches and seizures made under that Act. Therefore the provisions of section 38 (1) of the CPA which are not inconsistent with the provisions of the Drugs Control and Enforcement Act are applicable for effecting search, seizure or arrest under the Drugs Control and Informant Act also. Section 38 (1) was therefore complied with. Again, the arrest can be done without a search warrant, and this is provided under Section 14 (1) of the Criminal Procedure Act, Cap 20 R E 2002

On the question of tampering with the exhibits, there was nothing material which came out from the defense to show that the exhibits were tempered. There was proper labeling and recording of the exhibits on the movement register. The exhibits were moved from Gairo and handed over to the exhibit keeper. All the police officers had stated that the two bags were marked and labelled and sealed and they all confirmed the bags were handed over to the exhibit keeper at ADU, they were again marked, these are the same bags brought to Court, with the same markings. A perusal of the record show that

there was nothing to infer that the exhibits were tampered with. The evidence of the police officers, corroborated each other, and was further corroborated by the evidence of the exhibit Keeper of Anti-Drug Unit, and vice versa. The depositions of these police officers on identification of the two bags seized from the accused person in Gairo was also corroborated by the independent witness in his statement and exhibit P3, which was brought to Court and recognized by all the police officers who deposed in Court, and the Chief Government Chemist, thus the question of tempering with the exhibit has been ruled out. As stated in the case cited by the Counsel for the Appellant, the case of **William Maganga @ Charles vs Republic** (supra), chain of custody could be proved by oral accounts of witnesses who handled the exhibits after its seizure.

Regarding the confessions made by the accused person before the Police and having examined the confessions Exhibit P7 and P8, the fact that the statement was written by the accused person while he was under the police custody does not mean that he made them involuntary. The accused person never objected to the admission of the statement, thus he never retracted his confessions, had he done that during trial, the court would have had an opportunity to test its voluntariness by an inquiry,

In any event, it is seen that while making the statement, the accused person was in custody of the police. This is clear from the answers given by all the police officers who deposed in court as prosecution witnesses. All suspects make their confession while under custody, and it does not mean that their statements are not voluntary. Voluntariness needs to be tested by the trial court, if and when the accused tells the trial court that he did not make the confession or the confession was obtained under threat coercion or torture, the appellant did not alert the trial court, and he has missed the opportunity, as the appellate court cannot conduct an inquiry to test whether the confessions made before the police was free and voluntary. It be noted that the Court can convict the accused solely on his confession without it being corroborated as stated in the case of **Michael Luma vs. R (1994) TLR** at page 181 and also the case of **Hassan Juma Kanenyela & others (TLR 1992** page 100, the Court of Appeal held that "*it is matter of practice not of law that the confession taken involuntarily or retracted confession needs corroboration.*"

I have looked into the additional cautioned statement of the appellant, (exhibit p8); the statement was given outside the prescribed period of 4 hours. The Appellant was restrained on 21st December, 2022 but the

additional statement was recorded outside the four hours, the case of **Saidi Bakari vs. R, Criminal Appeal No. 422/2013, Court of Appeal at Tanga** (unreported) is relevant. As per Section 50 (1) of the CPA, the basic period available for interviewing the person, is the period of four hours commencing at the time when he was taken under restraint in respect of the offence, however, as held in the case of **Yusuph Masalu @ Jiduvi and others vs Republic , Criminal Application No. 112 of 2019**, the Court of Appeal held that the time spent in transporting the suspect from one point to another and the time taken for investigation is excluded in counting the four hours period. Thus, the statement was recorded on time as the period spent by the investigation and transporting the appellant from Gairo to Dar es Salaam cannot be counted in calculating the four hours' period under Section 51 of CPA.

Regarding the ground that the defense of the appellant was not considered, as held in the case of **Anthony Jeremiah Sorya vs Republic, Criminal Appeal No. 52 of 2019,** Court of Appeal sitting at Dodoma held at page 13 of the Judgement that "*failure to consider the appellant's defense is an issue of law with constitutional significance of the denial of the appellant's right to be heard".* The Court of Appeal held at page 14 of the Judgement

that *"if the Trial Court failed to consider the accused defense, the High Court should live up to its duty to subject the appellant's evidence to a fresh re-evaluation and come to its ow conclusion."* I have seen the defense. I have seen page 9 of the Judgement of the Trial Court in which the defense of the appellant was summarized and considered, the Trial Magistrate said, the accused defense was by and large a denial of the ownership of the bags that contained the narcotic drugs, while he admitted that the search was conducted at his house and the narcotic drugs were recovered and seized from his house. I have also seen the proceedings at page 51 where the accused gave his defense, he confirmed that the police went to his house, they searched the house but found nothing. During cross examination, the accused admitted that the house was searched and the police found the bhangi in his house, but he said, he does not know who owns the bangi. The Trial Magistrate, indeed considered the defense of the appellant in reaching into a verdict. The defense did not raise a shadow of doubt, and did not shake the evidence adduced by prosecution. After all, there was his own confession recorded freely before the police. The confession given to the police contains his personal particulars and corroborated the case of the prosecution. Indeed, the Trial Magistrate did not make any errors as he

considered the evidence of the appellant in his defense, which was short and nothing but a denial.

The Magistrate did not err in relying on the Certificate of Seizure of the Narcotic Drugs as it is evidently clear that there was no violation of Section 38(3) of the Criminal Procedure Act, which requires the police officer seizing any article or substance to issue an official receipt evidencing such seizure and on which the value of the property as ascertained and bearing in addition to his signature, the signature of the owner of the premises searched and that of at least one independent person who witnessed the search.

And in the case of **Abuhi Omari Abdallah & 3 others vs. R Criminal Appeal No. 28 of 2010**, the Court insisted that where the property is seized during search under section 38 (3) of the CPA the police officer must issue a receipt and that police officer seizing the property during searching must comply with the provisions of Section 38 (3) of the Criminal Procedure Act by which investigators are required to issue receipt for anything seized as a result of a search. The prosecution issued a seizure note which was signed by the searching officers, by the appellant who is the owner of the premises as well as by an independent witness, this seizure note was exhibited in court

and it was received as evidence. There was no violation of section 38(3) of CPA.

Section 34B of the Evidence Act, Cap 6 R:E 2022, provides that Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts : Therefore, it is clear that a statement, if it falls under any of the six sub-clauses of Section 34B, is relevant, whether the statement is written or verbal, It is urged that in order that the statement should be relevant the actual words used by the person making the statement should be proved, if the statement is oral. If the actual words are not proved, the statement is not relevant and, therefore, not admissible.

What the law requires is that the statement which is relevant must fall within one of the cases set out in Sub-clauses (2) (a-f)). Whether that statement should be acted upon, whether that statement has evidentiary value, whether that statement is reliable, are all considerations which do not go to

the question of admissibility but to probative value. Thus, the statement is admissible after it has passed the requirements of section 34 B. It was proved before the Court that the person who made the statement could not be reached without causing delays, and the accused had admitted before the trial court to have been served with the statement of the witness, and had opted not to raise any objection. The statement was therefore correctly admitted as it fell squarely under the ambits of section 34B of the Evidence Act.

The procedure for search and seizure were complied with. The Certificate of Seizure issued after seizing the Drugs had the signature of an independent witness who witnessed the search. The Certificate of Seizure were signed by independent witness, the officers who performed the search, and the appellant.

There is overwhelming evidence pointing towards the appellant. His house was searched and he was found with the drugs. The search was properly done, as there was an independent witness witnessing the search as well as the seizure. The independent seizure witness could not be procured to give evidence but his statement was admitted in court under Section 34B of the

Evidence Act, and since there werePW2, and one more police officers whose evidence corroborated the statement of the independent witness, the Magistrate did not err to accord weight to the statement that indeed, the search was witnessed by an independent witness as required by section 38 (3) of CPA. After all, search and seizure procedures were properly done, and in accordance with the law, and that the appellant recorded his confessions, and I see no reasons as to why the trial court judgment can be faulted, and I agree and am bound by the holding of the case of **Dickson Elia Nsamba Shapatwa and another vs. R, Criminal Appeal No. 92 of 2007**, Court of Appeal sitting at Mbeya, in which the case of **Omar Ahmed vs. R (1983) TLR** was quoted with approval that the Appellate Court can only interfere with trial court findings in certain circumstances, the circumstances of which do not exist in the case.

In totality of the evidence adduced by the prosecution before the Trial Court, the prosecution case against the appellant was proved beyond reasonable doubt. Procedures of searching and seizing the drugs were not violated. The procedures of taking and recording confessions were properly followed, and there were no irregularities in recording the cautioned statements of the appellant. The exhibits were handled in accordance with the law, there was

no broken chain of custody to infer tempering of the exhibit. The exhibits were tested by the Government Chemist who confirmed before the Court that the contraband seized from the appellant were Narcotic Drugs of Cannabis Sativa (Bhangi).

Thus, the conviction and sentencing of the appellant was proper and in accordance with the law. The Conviction and sentence of the Appellant is hereby confirmed. To conclude, therefore, the Appeal is dismissed.

DATED AND DELIVERED AT MOROGORO THIS 11TH DAY OF DECEMBER 2023

(LATIFA MANSOOR J)
JUDGE
11TH DECEMBER 2023