

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

(DC)CRIMINAL APPEAL NO. 61 OF 2023

(Originated from Mlele District Court Economic Case No. 10 of 2022)

BAKARI S/O JOAKIM APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

Last order: March 14, 2024

Judgement: March 20, 2024.

JUDGMENT

NANGELA, J.:

This appeal originates from a decision of the Mlele District Court at Mlele in Economic Criminal Case No.10 of 2022. In that case, the appellant faced a charge of unlawful possession of prohibited plant (*cannabis sativa*, aka "Bangi") contrary to section 11(1) (d) of the Drug Control and Enforcement Act, Cap.95 R.E 2019.

The facts are that, following information divulged to the Police on the 15th of January 2022, the appellant's house at Mkuyuni village, Koledya Hamlet, was raided by Police officers from Majimoto Police Station, accompanied by the local authority leaders on an allegation that he was selling narcotics.

A search was carried out at the appellant's premises, but nothing was found. Upon further interrogation, the appellant is said to have led the Police to the house of one, Justin Alisen Kipeta where he had hired a room. Upon opening the room there was found substances kept in a bucket and upon further examination by the Office of the Chief Government Chemist, it turned out that the substances found in the appellant's hired room was prohibited plant namely, Cannabis Sativa (commonly referred to as "Bangi").

Upon hearing of the charges, the appellant was found guilty, convicted, and sentenced to a thirty (30)-year's jail term. Aggrieved by the conviction and sentence he filed this appeal raising four grounds namely, that:

1. during the search conducted at the resident of the appellant by Pw-1, Pw-2, and Pw-3 nothing suspicious was retrieved by the police officers thereat;
2. the trial court erred in law and fact to convict the appellant while the offence was not proved beyond reasonable doubt;
3. the trial court erred in law and fact when it admitted the caution statement and extra-judicial

statement which were procured by torture and deception contrary to law and its content were not read to the appellant before signing the same;

4. the trial court erred at law by giving its judgement without taking into regard the evidence adduced by the appellant did not testify/give evidence at all.

On March 14, 2024, this appeal was called for hearing. The appellant was present in person and was unrepresented. On the other hand, Mr. Frank Mwigune, State Attorney, appeared for the Respondent. In arguing his application, the appellant requested this court to consider and uphold his grounds of appeal and set him free.

When Mr. Mwigune addressed this court, he informed the court that the Respondent was not interested to contest this appeal. He submitted that there is variance between the charge sheet and the evidence on the ground.

Mr. Mwigune submitted that, the charge was framed in such a way that the relevant charging section us not used and, instead section 11 (1) (d) of Cap.95 R.E 2019 which deals with prohibition of cultivation of prohibited plants. However,

according to Mr. Mwigune, the whole matter as reflected in proceedings is about being found in unlawful possession of cannabis sativa (commonly referred to as "Bangi"). In view of all that, he urged this court to allow the appeal, quash the conviction and set aside the sentence since the defect observed in the charge is incurable and has occasioned a miscarriage of justice.

I have considered the appellant's grounds of appeal and the submissions made by Mr. Mwigune. I have also looked at the record of appeal. I do agree with Mr. Mwigune's submissions that this appeal should be allowed. In my view, a charge sheet which is incurably defective cannot be relied upon and any conviction resulting from it cannot be sustained as the accused person cannot be said to have been afforded appropriate information to mount his defence. See the case of **Republic vs. Eliphas Jacob** [1984] TLR 345 (HC).

The case of **Isidori Patrice vs. Republic** (Criminal Appeal 224 of 2007) [2007] TZCA 2 (30 October 2007) is also relevant for consideration when one considers whether an accused person was able to properly frame his defence when the evidence offered in court is at variance with the charges laid

before the court. In that case, the Court of Appeal was of the view that:

"A charge which did not disclose any offence in the particulars of offence is manifestly wrong and cannot be cured under section 388 of the Criminal Procedure Act, 1985.

In view of the foregoing considerations, I find merits in the submissions of Mr. Mwigune and proceed to uphold this appeal, quash the conviction, and set aside the sentence imposed on the appellant by the trial court. The appellant should be released forthwith unless he is held for lawful reasons.

It is so ordered.

DATED ON THIS 19th DAY OF MARCH 2024



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DEO JOHN NANGELA

JUDGE

