

**IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA**

(CORAM: MSOFFE, J.A., KIMARO, J.A., And JUMA, J.A.)

CRIMINAL APPEAL NO. 82 OF 2011

**MAENDELEO BWANAAPPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT**

**(Appeal from the decision of the High Court
of Tanzania at Mwanza)**

(Nyangarika, J.)

**dated 9th day of February, 2011
in
Criminal Appeal No. 180 of 2009
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JUDGMENT OF THE COURT

1st & 2nd August, 2013

MSOFFE, J.A.:

This is a short appeal. It arises from the decision of the High Court (Nyangarika, J.) which upheld the conviction of the appellant for distribution of unfit food for human consumption c/s 32(1) of the Tanzania Food, Drugs and Cosmetics Act, 2003 (the Act). Ideally, paragraph (a) of the subsection should have been cited in the charge sheet because, according to the copy of the Act which we have at our disposal at the moment, paragraph (a) thereto is the one which deals with the aspect of distribution. Anyhow, very briefly the case against the appellant was that

on 14th September, 2008 he distributed 1800 kgs of beans to PW1 Ignatus Kapira which were unfit for human consumption. PW3 William Byabati, an agricultural officer, told the trial District Court of Geita that he examined the beans and opined that they were unfit for human consumption. Indeed, he prepared a report to that effect which he eventually produced and was admitted in Court as exh. P2. Following the conviction, the appellant was sentenced to a conditional discharge under section 38(1) of the Penal Code. If we may digress a bit here, it is not clear from the record why the trial Principal District Magistrate invoked the Penal Code instead of section 123 of the above Act which, we think, ought to have been the specific provision in the circumstances. Be as it may, the appellant's first appeal to the High Court was unsuccessful, hence this second appeal.

Before us the appellant appeared in person, unrepresented. On the other hand, the respondent Republic had the services of Mr. Castus Ndamugoba, learned State Attorney, who argued in support of the appeal.

The memorandum of appeal has listed four grounds of appeal. However, we are in agreement with Mr. Ndamugoba that grounds one and two thereof are the most relevant in a fair determination of this appeal. The main complaint in these two grounds is that PW3 did not have the necessary qualifications to conduct the above examination.

To start with, as correctly submitted by Mr. Ndamugoba, PW3 was not even an authorized inspector in terms of section 105 (b) of the Act. And, assuming he was, his powers, would only be limited to those provided for under section 106 of the Act which have nothing to do with the offence the appellant was charged with.

Yet again, as correctly pointed out by Mr. Ndamugoba, PW3 was not even an analyst duly appointed and gazetted in line with the provisions of section 15 of the Act.

It follows that once the evidence of PW3, the key witness in the case, is discounted there was no other evidence upon which a conviction could safely lie.

For the above reason, we allow the appeal, quash the conviction and set aside the sentence.

DATED at MWANZA this 1st day of August, 2013.


J.H. MSOFFE
JUSTICE OF APPEAL

N.P. KIMARO
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

I Certify that this is a true copy of the Original.




P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL