

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
**IN THE DISTRICT REGISTRY
AT MWANZA**

APPELLATE JURISDICTION

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HIGH COURT OF TANZANIA
MWANZA

HC. CRIMINAL APPEAL NO. 326 OF 2004

*(Original Cr. Case No. 311 of 2003 of District Court of Tarime District at
Tarime, before A. L. Malya PDM)*

JOSEPH ADEDE APPELLANT
(Original Accused)

Versus

THE REPUBLICRESPONDENT
(Original Prosecutor)

JUDGMENT

17.10.2008 – 20.10.2008

G. K. RWAKIBARILA. J

Appellant **Joseph Adege** was convicted in Tarime District Court Criminal Case No. 311 of 2003 of unlawful cultivation of narcotic plant c/s 12 (d) of the Drugs and Prevention of Illicit Traffic in Drugs Act No. 9 of 1995, as amended by Acts Nos. 9 of 1996 and 31 of 1997 and sentenced to suffer five years imprisonment. He felt aggrieved of the conviction and sentence and lodged this appeal.

The summary of evidence which was adduced during appellant's trial is that by 16.07.2003 PW⁴ E. 6544 PC Exsupa and PW¹ D 9969 PC Juma were detectives in Tarime District within Musoma Region. Sometime before that day, they got a complaint that appellant was cultivating cannabis plants known as bhang. And early in the morning on the same day, they traveled to Nyamasanda

village within Tarime district and first reported to the ward executive officer PW² Jackton Ajwang and the village executive officer, PW³ Musa s/o Seda. Appellant was, until that day, a resident of that village.

Then detectives (PW⁴ and PW¹) and Nyamasana village leaders (PW² and PW³) proceeded to appellant's home and arrived there at around 05:40 a.m on that day when he was still in bed. They required appellant to accompany them to his estimated one acre shamba which was adjacent to his home with maize and cannabis plants. The cannabis plants were uprooted, packed and later found to weight one thousand (1,000) kilograms. During the trial of appellant on 31.12.2003, an inventory was tendered by PW¹ as Exhibit P¹ to show how the cannabis was disposed of.

In course of his defence appellant contended that on the evening which preceded his arrest, he quarreled in the bar with his village leaders PW² and PW³ who later made false reports to detectives PW⁴ and PW¹ who subsequently arrested and implicated him in this matter. Appellant repeated this version in his memorandum of appeal and, in addition, put it that he was not granted a fair trial by the trial court which refused him an opportunity to summon his witnesses.

But records of the trial court clearly display how appellant was properly informed of his rights to defend himself. That included his right to summon witnesses. He opted to defend himself on oath and the trial magistrate recorded each step accordingly. Let it even in this

appeal be exposed that in his memorandum of appeal, he stated that he didn't need to appear in person before this court.

The other grounds of appellant's appeal pivot on credibility of witnesses. He wanted this court to believe that PW² and PW³ raised false accusations against him on this offence after their quarrel in the bar. But the trial magistrate had the opportunity to examine and assess prosecution witnesses when they were testifying. The trial magistrate was right to believe how detectives PW¹ and PW⁴ visited Nyamasanda village and required village leaders PW² and PW³ to accompany them to appellant's home where the 1,000 kilograms of cannabis were found and picked from his shamba. It follows that PW² and PW³ did not team up on their own to frame accusations of this matter.

The rest to consider is the sentence of five years imprisonment. The trial magistrate correctly addressed himself on the gravity of cultivating bhang in Tarime district and in this situation appellant was cultivating it at a large scale. A deterrent custodial sentence was proper and it was previously confirmed by Hon. Mchome, J on 11.01.2005 through a "*confirmation of sentence form*" which is available in the case file for Tarime District Court Criminal Case No. 311 of 2003.

This appeal therefore has no merit and it is entirely dismissed.

G. K. Rwakibarila
JUDGE
18.10.2008

Date: 20/10/2008

Coram: Hon. G. K. Rwakibarila. J


Appellant: Absent

For Republic: Mr. Matuma, SA

B/C: A. Kaserero

Court:

Judgment has been delivered at Mwanza this 20th day of October, 2008 and right to appeal to be explained to appellant who is absent (convict in prison).



G. K. Rwakibarila
JUDGE

At Mwanza
20.10.2008