

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

HC. CR. APPEAL NO. 180 OF 2007

*(Original Criminal Case No. 571 of 2006 of the District Court of
Tarime District at Tarime. Before A. L. Mallya, Principal District
Magistrate)*

SUZAN AUMA d/o KENEDYAPPELLANT
(Original Accused)

Versus

THE REPUBLICRESPONDENT
(Original Prosecutor)

JUDGMENT

G. K. RWAKIBARILA. J

This **SUZAN AUMA d/o KENNEDY** was charged and convicted of two offences, namely (i) being in unlawful possession of narcotic drugs c/s 12 (d) of the **Drugs and Prevention of Illicit Traffic Act, 1998** as amended by **Act No. 9 of 1998** and **Act No. 31 of 1997** and (ii) unlawful possession of moshi c/s 30 of **The Moshi Manufacture and Distillation Act, 1996** as amended by **Act No. 22 of 1981**. The District Court at Tarime in Musoma District which convicted appellant of both counts sentenced her to pay a fine of three hundred thousand shillings or in default serve one year imprisonment on the second count which she pleaded guilty. But on the first count where she was convicted after a full trial, a custodial sentence of six years imprisonment was passed. It follows that she lodged

this appeal to contest her conviction and sentence on the first count alone.

It appears from records of the trial District Court that one sole witness for the prosecution **PW¹** ASP SIMON CHACHA was on December 21st, 2006 at around 12:10 hours on routine patrol at Kanga Village within Musoma District in a group of about half a dozen detectives. At that juncture an informer disclosed to them how appellant was indulging in a dubious business of selling bhang and illegally distilled alcohol commonly nicknamed "***gongo***". These detectives proceeded to appellant's home and in course of their investigations there, appellant showed them about six kilograms of bhang (the subject matter of the first count) and ninety litres of "***gongo***" (the subject matter of the second count). Then appellant was arrested by those detectives with the consignment of the said bhang and **gongo** and escorted to Tarime where the criminal proceedings for both counts were preferred against her.

The conviction and sentence of appellant on the second count was proper because proceedings of the lower court and even in this court in her memorandum of appeal show how she conceded throughout to have been found in possession of "***gongo***". At this stage, there is no reason to fault that finding irrespective of failure by the prosecution to provide a scientific report or explanation to the same.

But in the case of allegations in the first count of possessing bhang, appellant bitterly denied them during her trial and in her memorandum of appeal. Her denial of possessing bhang could have been rebutted by **PW¹** who testified for the prosecution alone. But during this appeal I had an opportunity to peruse thoroughly in proceedings of the trial court and found out that this **PW¹** did not disclose anywhere the methods, style or expertise which he used in order to determine whether the leaves which were found in possession of appellant at the **locus in quo** during the material time constituted bhang. In the absence of such a disclosure, it is unsafe to make a sweeping conclusion that the same was genuinely the "*bhang*".

The learned State Attorney for the Republic and ostensibly the respondent in this appeal Ms Mwadenya laboured alot in order to set-off the loophole in **PW's** evidence when she submitted, **inter alia**, that:

"PW's evidence suffice to justify that appellant was found in possession of the bhang. I feel that determination of bhang by an expert was not necessary because bhang is bhang and it is so known, mostly when it is Tarime district where the appellant was arrested in its possession"

With respect to MS Mwadenya's view on the aforesaid, it is my considered view that in this matter the records are silent on whether **PW¹** happened to deal with investigations of such cases for a reasonable time or whether he was new in Tarime area. That means failure by **PW¹** to disclose his experience in Tarime or other places where bhang is found, appellant's arguments in allegations which were leveled against her in the first count have remained unrebutted.

As a result, appellant's conviction in the first count is quashed and the sentence of six years imposed on her is set aside. She should be set free immediately from now unless legally held for other reasons.

It is important to note that for the purposes of this appeal, the appellant shall continue to remain in custody if she shall be found to have defaulted to pay a fine of T. Shillings three hundred thousand (300,000/=) or one year imprisonment in default in respect of her conviction and sentence on the second count.



Sgd: G. K. Rwakibarila

JUDGE

06/08/2008

COURT:

Judgment delivered at Mwanza this 06th day of August, 2008 at presence of MS Mwadenya for Republic but at absence

of appellant and right to appeal in time has been explained thoroughly.



A handwritten signature in black ink, appearing to read "G. K. Rwakibarila".

G. K. RWAKIBARILA
JUDGE