

**IN THE HIGH COURT OF TANZANIA  
AT TABORA**

**APPELLANT JURISDICTION**

(Tabora Registry)

**(DC) CRIMINAL APPEAL NO. 24 OF 2012**

CRIMINAL CASE NO. 95 OF 2009  
OF THE DISTRICT COURT IGUNGA

**BEFORE: A.T.MILLANZI Esq. RESIDENT MAGISTRATE**

**JOHN S/O BENJAMINI .....APPELLANT**

(Original accused)

**VERSUS**

**THE REPUBLIC .....RESPONDENT**

(Original prosecutor)

24/6/2012-2/7/2013

**J U D G E M E N T**

**HON. S.B. LUKELELWA, J.**

The appellant John Benjamini was on 13/4/2013 convicted by Igunga District Court on a charge of two counts of selling Drugs in unregistered premises contrary to section 18 (1) and (4) of the Tanzania food Drugs and cosmetics Act, 2003 and Unlawful selling of Restricted drugs contrary to section 22 (2) (a) and (4) of the Tanzania Food, Drugs and cosmetics Act, 2003.

The appellant was sentenced to serve two years imprisonment.

On 10/6/2009 PW1 Mgeta Alexander a pharmacist Assistant visited the appellants shop and found him selling restricted drugs. The appellant premises were not registered, and the appellant had no qualifications to deal in drugs. The appellant was arrested and the case was investigated by PW2 E.1326 D/Cpl Zacharia, who wrote a caution statement of the appellant exhibit **"P4"**.

The inspection of the shop of the appellant was also witnessed with PW3 Zengo s/o Muliyani.

The appellant had told the Court in defence that on 10/6/2009 at 10.00 a.m. there was inspection of pharmacy. He did not know if the said inspection was conducted legally because he was not at the said pharmacy.

The appellant is challenging the conviction. That he was a mere servant and not the owner of the shop.

I have gone through the proceedings of the trial Court the evidence against the appellant was overwhelming, if the appellant was a mere servant of the shop he was obliged to mention his employer and owner of the shop. Again even if he was a mere servant he was also supposed to possess the necessary qualifications which enabled him to deal in pharmaceuticals. He should have been a registered pharmacist or chemist.

However the appellant in his advance mitigations of sentence in case he was convicted had submitted that he was mere peasant and casual labourer.

It follows therefore that the appellant deserved the conviction and the appeal on conviction is dismissed.

As regards the sentence of two years imprisonment imposed on the appellant the learned trial Resident Magistrate erred to impose sentence of two years without specifying on which count when the appellant was convicted on two counts.

I hereby set aside the sentence of two count imposed on the appellant, and substitute thereto a sentence of two years on each count, and order the sentences run concurrently.

Appeal dismissed in its entirety

Order accordingly.

  
**S.B. LUKELELWA**

**JUDGE**

**2/7/2013**

Date: 2/7/2013

Coram: Hon. S.B. Lukelelwa, J

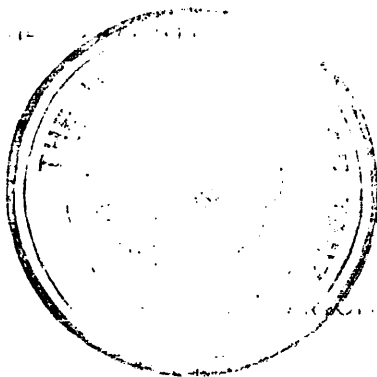
Appellant: Absent

Respondent: Mr. Innocent Rweyemamu

State Attorney who is present

B/Clerk: Mary Mpululu

**Order:-** Judgement delivered in Court this 2<sup>nd</sup> July 2013.



  
**S.B. LUKELELWA**

**JUDGE**

**2/7/2013**