

**“ORIGINAL”**

**IN THE HIGH COURT OF TANZANIA  
DODOMA DISTRICT REGISTRY  
AT DODOMA**

**CRIMINAL APPELLATE JURISDICTION**

**DC CRIMINAL APPEAL NO. 18 OF 2016**

*(Originating from the District Court of MPWAPWA*

*Criminal Case No. 71 of 2014,*

*Hon. P.F.MAYUMBA, RM)*

**MHANDO S/O STANFORD.....APPELLANT**

**VERSUS**

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

**JUDGEMENT**

**Mansoor, J:**

**1<sup>ST</sup> MARCH 2017**

This appeal arise out of the judgment dated 23<sup>RD</sup> APRIL 2015, passed by the District Court of Mpwapwa in Criminal Case No. 71 of 2014, by which, the Appellant was convicted of the



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offence charged of being in unlawful possession of narcotic drugs contrary to Section 12 (d) of the Drugs and Prevention of Illicit Traffic in Drugs, Cap 95 R: E 2002. It was alleged by the prosecution that on 11<sup>th</sup> day of June 2014 at about 21:45 hrs. at Kikombo Area within Mpwapwa District in Dodoma Region the appellant was found by Police Officer one Y.E Sudi ASP being in unlawful possession of 5kgs of cannabis sativa (bangi). He was convicted and sentenced to five years imprisonment without fine.

During trial, the evidence of the prosecution case given through PW1 and PW3, the police officers, they testified that they were informed that the Appellant will pass at Liti Gate and that he was carrying a bag of Rambo with bangi on it. PW2 who was the gateman at Liti Gate testified during trial that he saw the Appellant with a bag carrying bangi. Based on the testimonies of the three prosecution witnesses, the trial Magistrate was satisfied that the prosecution has proved the case beyond reasonable doubt; he proceeded to convict the Appellant and passed a sentence against him.



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The Appellant now filed this appeal and has raised the following grounds of Appeal:

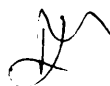
1. That , the learned Magistrate erred in law and facts by convicting the Appellant while the prosecution case was weak;
2. The evidence of the two police officers was not collaborated to warrant a conviction.
3. There is no evidence proving that the bangi belonged to the Appellant;
4. That the two police officers who testified before the trial Court had no knowledge or were not experts of knowing whether the goods found with the Appellant was bangi, as there was no Report from a Qualified Chemist.

During the hearing of the Appeal, Ms. Luwongo, the State Attorney who appeared for the Republic, supported the appeal arguing that, the conviction and sentence was wrong in that the prosecution witnesses contradicted each other. She said at page 7 of the proceedings it shows that the accused was



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arrested in the presence of mlinzi and he was found with 5 kgs of bangi, while PW2 statement at page 12 of the proceedings at paragraph 4 and page 13, 3<sup>rd</sup> line, he says that the accused was arrested, and when searched, he did not see anything, and he did not see whether the police found anything in the accused pocket. She submitted that the contradiction goes to the root of the case, and there is no proof whatsoever given by the prosecution showing that the appellant was found with 5 kgs of bangi as alleged. She also stated that there is no evidence adduced by the prosecution proving that what was found with the appellant was indeed a narcotic drug since there was no report of the Chief Chemist that established that what they found was bangi and it was of 5 kgs. PW1 also did not state his knowledge and how he knew that the leaves found with the appellant was bangi. There is no evidence establishing the weight of the bangi found. The State Attorney argued that the prosecution ought to have weighed the bangi to know exactly the weight of the bangi found with the appellants. She said it is important to know the amount of



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narcotic drugs for sentencing, as the law applicable when the accused was arrested was Cap 95.

The State Attorney also argued that the chain of custody was not proven. She said it was PW3 who searched the Appellant, and he was the same person who produced the exhibit in court. PW3 did not explain as to how he marked the exhibit, how the exhibit was stored and under whose custody was the exhibit stored, and that there was no proof that what was produced in court as exhibit was what was found with the accused. There is a possibility that the exhibit was tempered with. The State Attorney referred the Court to the case **of Paulo Maduka and others vs. R , Criminal Appeal No. 110 of 2007**, Court of Appeal at Dodoma in which the Justices of Court of Appeal had this to say:

*“...thereafter, a foolproof chain of custody would have been set in motion. By “Chain of Custody” we have in mind the chronological documentation and /or paper trail, showing the seizure, custody, control, transfer, analysis and disposition of evidence, be it physical or electronic. The idea behind*



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*recording the chain of custody, it is stressed, is to establish that the alleged evidence is in fact related to the alleged crime- rather than , for instance, having planted fraudulently to make someone appear guilty.”*

Having heard the submission by the Learned State Attorney supporting the appeal in this case as per the evidence of PW1 and PW2, the police officers, the Appellant was a passenger in a motorcycle, the motorcycle was being driven by somebody else. When they were signaled to stop at the gate by the police, the driver of the motorcycle succeeded in running away, the Appellant was apprehended. The bag or the Rambo Bag or the Sulphate bag found in the motorcycle was found to contain 5 kgs of bangi. There is indeed contradictory evidence given by the prosecution, while the two witnesses testified that they found him with bangi, the other prosecution witness testified that they did not find him with anything. This alone raises doubt and could have been enough ground for quashing the conviction and setting aside the sentence.



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Again, the prosecution did not tender any report of the chemical examiner to certify that what was found was actually bangi and whether or not the bangi was seized since no seizure certificate was produced at trial, and if the bangi was seized from the accused, there was no proof establishing that the leaves seized were bangi or was a mixture containing a Narcotic Drug. No Test has been conducted in order to ascertain the exact quantity of Narcotic Drug contained in the leaves. I agree with the Learned State Attorney and in my considered opinion too, such Test by chemical examiner is required in the case of the leaves to ascertain the type of drug and the quantity. In the absence of the Chemical Examiner Report, the Trial Magistrate was wrong in convicting the Appellant with the offence charged.

Again, assailing the judgment of the courts below, the learned state attorney appearing for the respondent would contend that the prosecution failed to prove the chain of custody or paper trail. The Courts below also failed to take note of this important aspect which led to miscarriage of justice. The



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prosecution failed to prove that the procedure for seizure was done and that after the bangi was seized from the accused, they also failed to prove where was it taken soon after its seizure. Mere production of Exhibit (bangi itself) at trial will not be an evidence to show that the police have seized bangi from the possession of the Appellant. The seized leaves, alleged to be bangi, have not been sent to chemical analysis. Even though the police have concluded that the seized leaves are bangi by either its smell or appearance, such a conclusion was not supported by any material documents. Again, even though it was alleged by the prosecution that the seized goods were brought from the custody of the police, however, there is no evidence which was produced to prove that the leaves was produced before the Authorized Officer soon after it's seizure, the Authorized Officer himself was not examined on the side of the prosecution, which is fatal to the case projected by the prosecution. In short, chain of custody was not proven.

Consequently, and based on the above, this appeal has merit and is allowed; the conviction is quashed and the sentence is

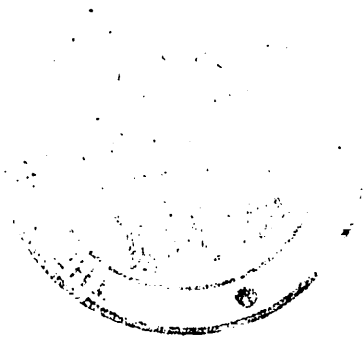
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set aside. The Appellant is ordered to be released from prison unless his continued confinement is related to other lawful cause.

It is ordered accordingly



*L. Mansoor*  
**L. MANSOOR**

**JUDGE**

**1<sup>ST</sup> MARCH 2017**

Judgement delivered in Court today in the presence of the Appellant, *Susana* State Attorney for the Respondent Republic and Mr C.A.Chali the Court Clerk.



*L. Mansoor*  
**L. MANSOOR**

**JUDGE**

**1<sup>ST</sup> MARCH 2017**