

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
CRIMINAL APPEAL NO. 134 OF 2018

(Original Criminal Case No. 301 Of 2017)

RAFFI MOHAMED NDITIAPPELLANT

VERSUS

THE REPUBLIC RESPONDENT

2/7/2018 &19/7/2018

JUDGMENT

I.P.KITUSI,J

Before the District Court of Temeke, at Temeke, the appellant Rafii Mohamed Nditi was charged with being in Possession of Narcotic Drugs Contrary to section 15(1) (a) of the Drugs Control Enforcement Act No. 5 of 2015. It was alleged before the trial that on 9th March 2017 at Mbagala - Zakem area in Temeke District Dar es Salaam Region the appellant was found in possession of 2.36 grams of Narcotic Drug namely Heroin Hydrochloride.

On the evidence of three witnesses for the prosecution and appellant's own testimony in defence the District Court found him guilty, convicted him as charged and sentenced him to 30 years imprisonment.

Aggrieved, the appellant has preferred this appeal against both the conviction and sentence seeking to fault the trial court's decision on five grounds, namely;

1. That the prosecution did not prove the chain of custody of the alleged drugs.
2. That the trial court erred in admitting a retracted cautioned statement (Exhibit.P4) without conducting an inquiry.
3. That the prosecution evidence was not corroborated.
4. That the sentence was excessive.
5. That the prosecution did not prove the case beyond reasonable doubt.

At the hearing the appellant appeared in person unrepresented and had only a prayer for lenience in sentencing for submission. The respondent Republic was represented by Ms Flora Massawe, learned State Attorney.

The learned State Attorney made a very brief submission on a point of law raising the issue of the jurisdiction of the trial court. She submitted that the charge that was preferred against the appellant fell under the Economic and Organized Crimes Control Act, Cap 200 which vests the jurisdiction of cases on the High Court. She further submitted that the District Court had no jurisdiction under section 3(3) (b) of Cap 200.

Ms Masawe submitted that the District Court would only have the requisite jurisdiction if the DPP's consent under section 26(1) and a certificate under section 12(3) and (4) of Cap 200 had been obtained. She submitted that the consequences of the omission to clothe the District Court with jurisdiction is to quash the proceedings and order the case to be filed before a court of competent jurisdiction. The learned State Attorney cited the case of **Adam Selemani Njalamoto V. Republic** Criminal Appeal No. 196 of 2016 CAT (unreported).

With respect, I agree with the learned State Attorney on the point that the District Court had no jurisdiction. I consequently quash the proceedings before the District court as well as the resultant convictions and set aside the sentence.

The appellant should be set free unless his continued incarceration is for another lawful cause. The Director of Public Prosecutions may prefer fresh charges against him in a court of competent jurisdiction.




I.P. KITUSI

JUDGE

19/7/2018