

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

KIGOMA DISTRICT REGISTRY

AT KIGOMA

APPELLATE JURISDICTION

CRIMINAL REVISION NO. 3 OF 2020

(Original Criminal Case No. 433 of 2019 of the District Court of Kasulu at Kasulu)

DUNDE YEGUZA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

Dated: 25/6/2020 & 10/7/2020

Before: Hon. A. Matuma,J

The applicant Dundu s/o Yeguza was charged for unlawful Trafficking in Narcotic Drugs contrary to section 15 (A) (1) (2) (C) of the Drugs and Enforcement Act No. 5 of 2015 as amended by Act No. 15 of 2017.

He pleaded guilty to the charge and therefore convicted on his own plea of guilty.

He was sentenced to pay the fine of Tshs 500,000/= or in default to serve a custodial sentence of three years.

In his routine inspection of Court's records, the principal Resident Magistrate Incharge of the Resident Magistrate's Court of Kigoma observed that the records in respect of this matter was wanting.

In his inspection Report which forwarded the records of this case to this Court, he observed that the applicant was charged under a wrong or none existing law.

Instead of being charged under the **Drugs control and Enforcement Act**, he was charged under the **Drugs and Enforcement Act**. With the missing name/word "**control**" between the words "Drugs" and "Enforcement", he observed that such cited law is not existing.

The learned Principal Resident Magistrate further observed that even the sentence meted to the applicant was illegal if it is to be taken that the conviction was proper. He observed that under the charged provision section 15A of the Act, the prescribed penalty is life imprisonment. He therefore, in the exercise of his powers under section 30 (2) of the Magistrate Courts Act, Cap. 11 R.E 2002 forwarded the records to this Court for Revision.

During hearing of this matter the applicant was absent, and the respondent had the service of Mr. Robert Magige learned state attorney.

The learned state attorney had the same observation to that of the Principal Resident Magistrate Incharge and argued that the charge sheet was defective for the citation of a none existing law.

He also faulted the plea of the applicant and in his view the plea therein **"it is true" was equivocal**.

The learned state attorney further argued that taking into account the amount of the drugs the applicant was found in possession, he was wrongly charged under section 15 A supra which is all about Trafficking in Narcotic Drugs. The applicant was however found in possession of only 100 grams of cannabis sativa Bangi which is a small quantity. As such, he argued, the applicant ought to have been charged for possession of small

quantity of Narcotic Drugs contrary to section 17 (1) (a) (b) of the Drugs control and Enforcement Act No. 5 of 2015.

The learned state attorney called this Court to allow this revision and acquit the applicant.

On my party without much ado, I entirely agree with the learned principal resident Magistrate Mr. Gadiel E. Mariki and the learned state attorney that the proceedings, conviction and sentence of the appellant in this matter is wanting.

The appellant was arraigned under a none existing law or a wrongly cited law which rendered the charge sheet defective. He was therefore, convicted under the defective charge.

It has been a settled law that conviction cannot stand on the defective charge.

I therefore, allow this revision and acquit the applicant of the offence he stood charged.

With this finding there is no need to dwell into the circumstances under which the plea was taken and the legality or otherwise of the sentence.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Matuma, J.", written over a horizontal line.

A. Matuma, J

10/7/2020