

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 86 OF 2020

*(Appeal from the Judgment of Kigamboni District Court dated 27/02/2020
in Criminal Case No. 58 of 2018 before Hon. Kifungu Mrisho Kariho, RM).*

ZAMARADI ALLY NTISI..... APPELLANT

VERSUS

REPUBLIC RESPONDENT

Date of last Order: 13/ 07/2020

Date of Judgment: 20/07/2020

J U D G M E N T

MGONYA, J.

In this appeal, the Appellant, **ZAMARADI ALLY NTISI** challenges the Judgement (impugned judgement) of the **Kigamboni District Court** (the trial court) in **Criminal Case No. 58 of 2018**. Before the trial court, the Appellant stood charged with one count of unlawful possession of prohibited plants contrary to **section 11(1) of the Drugs Control and Enforcement Act No. 5 of 205**. The Appellant pleaded not guilty to the charge, hence a full trial. At the end of the day, the

trial court found the Appellant guilty, convicted and sentenced her to thirty **years' imprisonment.**

Aggrieved by the conviction and sentence, the Appellant preferred this appeal. Her Petition of Appeal is based on five (5) grounds of Appeal, to wit:

- 1. That, the learned trial Magistrate erred in law and fact by convicting the Appellant without considering section 26 of the Criminal Procedure Act which provide the mode of searching women;***
- 2. That, the learned trial Magistrate erred in law and fact by reaching its decision basing on contradictory evidence among PW1 and PW4;***
- 3. That, the learned trial Magistrate erred in law and fact by convicting the Appellant without realizing that the prosecution side conducted search without search warrant;***
- 4. That the learned trial Magistrate erred in law and fact by concluding the evidence of tests exhibits between PW1 and PW4 while the Appellant was not present at the scene; and***

5. That the learned trial Magistrate grossly erred in holding that the prosecution proved its case against the Appellant beyond reasonable doubt.

Wherefore, the Appellant prays this court to quash the conviction and set aside the sentence awarded by the lower court with an order that her liberty be restored forthwith.

When the matter came for hearing on 13th July 2020, Appellant prayed the court to adopt her grounds of appeal and consider them.

Respondent on the **1st** ground of Appeal, it is the learned State Attorney's concern that the law demands if the arrest and search is done and if the Accused is female, the presence of female Police is required.

Further, the learned State Attorney averred that, looking at the records of this matter, the record shows that the Police who went to the Appellant to arrest and search her was male Police. In that event; it is the Counsel's conclusion that this is contrary to the law; and therefore Republic supports this ground.

For the rest of the grounds, it is the State Attorney's observation that, the issue of chain of custody was correctly taken care. However, the ambiguity raised from the 5th and 2nd witnesses who were the Policemen who went to the scene.

Referring to page 11 of the proceedings, it was observed that, PW5's statement does not show that he was a Leader to the Appellant's locality, hence the witness to the search needed some people who were coming from that particular place/area, and that for someone who cannot be traced where he came from, it is something which attracts ambiguity to the genuineness of the case against the Appellant.

Lastly, it is the learned State Attorney's assertion that PW2 did not specify where the alleged drug was found it has been said that in the situation he was supposed to be very detailed and specific to the entire search since the offence charged attracts **30 years' imprisonment**. In that case, the Counsel stated that the offence has to be proved beyond reasonable doubt. Failure of which, Republic pronounced to support the grounds of Appeal and the entire appeal.

After I have gone through the Republic's submission in respect of grounds of Appeal. I fully support the learned State Attorney's observations. Further to that, I have noted some legal anomalies from the proceedings of the trial Court. To mention the few, is an admissibility of Exhibit P1.

From the record, **Exhibit P1** was admitted after the accused had objected; and the same was immediately admitted as

Exhibit P1 without giving a chance the Accused to state/explain as to why she is objecting. For easy of reference, it was observed at Pg. 9 that:

"Prosecutor: This is the Report..."

Accused: I object

Court: Report is marked as Exhibit P1"

The reason from the Accused that she is objecting has to be on record, if possible the reply from Prosecution to be also in record to be followed by the decision on the objection by the trial Magistrate before she/he admit the document for evidence. This is what is meant by **"The right to be heard."**

The same error re-occurred when **Exhibit P2** was admitted without being properly marked; as the same was admitted as follows:

"Court: 428 pulls and 3 bundles of bhangji are marked and collectively."

The same anomaly of admitting the evidence without availing the chance to the Appellant to respond occurred to **Exhibit P3.**

In the event therefore and for the foregoing reasons, I respectively uphold **all the above grounds of appeal** as I have prove that there were some serious irregularities and anomalies

at the trial court proceedings, hence the Appellant at the trial court did not have a fair trial.

Consequently, **I further find the appeal meritorious and allow it.** From the above, I therefore proceed to **quash the conviction and set aside the sentence imposed against the Appellant.**

I further order that the Appellant be released from prison forthwith unless held for any other lawful cause.

It is so ordered.

Right of Appeal Explained.



**L. E. MGONYA
JUDGE
20/07/2020**



Court: Judgment delivered in chamber in the presence of Ms. Faraja George, Senior State Attorney for the Respondent, the Appellant in person and Ms. Veronica RMA this 20th day of July, 2020.



**L. E. MGONYA
JUDGE
20/07/2020**

