

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CRIMINAL APPEAL NO. 30 OF 2020

*(Originating from Criminal Case No. 48 of 2018 in the District Court of Ilala
at Samora (Mujaya, RM))*

**OMARY SULTAN@ DOGA.....1ST APPELLANT
AMOS MAGOMA.....2ND APPELLANT
SHUKURU MWARONGO.....3RD APPELLANT**

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

MASABO, J.:-

Omary Sultan@ Doga, Amos Magoma and Shukuru Mwarongo were jointly charged and convicted of being found in unlawful possession of Narcotic Drugs contrary to section 11 (1)(d) of the Drugs Control and Enforcement Act, No. 5 of 2015. Each was sentenced to 30 years imprisonment. They are now before this court in pursuit of their appeal which is armed with 15 grounds of appeal against both, the conviction and sentence.

In summary, their complaints are as follows, the charge sheet was defective as it did not disclose the time for commission of the offence; there is material

disparity between the particulars of the offence in the charge sheet and the evidence of PW2 on what exactly they were found in possession; Exhibit P1 (containing 6 pallets of bhangi) and exhibit P2 (a report from the Government Chemistry) were unprocedurally admitted. They also contend that the provision of section 9(3) of the Criminal Procedure Act, Cap 20 RE 2019 was not complied with as they were not furnished with the complainant's statement; PW2 was not led to identify the certificate of seizure; Exhibit P4 (exhibit register) was tendered by Public Prosecutor; the chain of custody for exhibit P1 was not established and the mandatory provision of section 231 of the Criminal Procedure Act was not complied with.

At the commencement of hearing, Ms. Chistine Joas, the learned State Attorney who appeared for the Respondent, supported the appeal. She submitted that the charge sheet was defective as the appellants were found in unlawful possession of drugs and each of them was in possession of two pallets making a total of 6 pallets, thence they ought to have been 3 counts but the charge sheet had only one count. Also, she argued that the Government Chemist produced 6 pallets together with a report which was never read over to the appellants and they were not availed an opportunity to asks questions. Also, she argued that the certificate of seizure and the Government Chemist's report were not read over to the appellant.

I have taken due regard to the submission by the learned State Attorney. Regarding the first point relied upon in supporting the appeal, there is no dispute that the appellants were jointly charged. The charge sheet contains

one count, namely unlawful possession of Narcotic Drugs contrary to section 11(1)(d) of the Drugs Control and Enforcement Act, No. 5 of 2015. The particulars of the offence as stated in the charge sheet are that:

Omary Sultan@ Doga, Amos Magoma and Shukuru Mwarongo, in 15th July 2027 at Buguruni Madenge area within Ilala District in Dar es Salaam, was found in possession of Narcotic Drugs namely cannabis Satova commonly known as Bhangi weighing 191.84 grams

With due respect to the learned State Attorney, having consulted section 135 of the Criminal Procedure Act [Cap 20 RE 2019] which provides the content of charge sheet, I am unable to agree with her on this point. Whereas I note that PW2, Ass Insp Twaha Hussein, the police officer who arrested the appellants and seized the narcotic drugs testified that on the material date and time each of the appellants was found with 2 pullets, it is not the requirement of section 135 that the charge sheet contain each and every information regarding the subject of the offence. Not only that, it is a settled position of law that the offence committed in a sequence in the same transaction is charged together. Section 133(1) of the Criminal Procedure Act provides;

"(1) Any offences may be charged together in the same charge or information if the offences charged are founded on the same facts or if they form or are a part of, a series of offences of the same or a similar character

Even if I were to agree with the learned State Attorney that the charge sheet was defective, my findings would still be intact as the defect if any, did neither occasion injustice nor a denial of fair hearing. The appellants knew very well the nature of the case against them (see **Mussa Mwaikunda Vs. Republic** [2006] TLR 387 and **Jackson Venant Vs. Republic**, Criminal Appeal No. 118 of 2018 (unreported)).

As to the second point that the certificate of seizure and the Government Chemist's report were not read over to the appellant, having scrutinised the records, I have observed that after the the report was admitted as exhibit P2, it was not read over. Likewise, the content of the seizure report which was admitted as exhibit P3, was not read over after its admission. This was a fatal procedural irregularity. The gravity of this failure and its consequences were discussed by the Court of Appeal when addressing a similar issue regarding the admission of a PF3 in **John Mghandi @ Ndunde v. Republic**, Criminal Appeal No. 352 of 2018 (unreported), where it was held that:

We think, we should use this opportunity to reiterate that whenever a documentary exhibit is introduced and admitted into evidence it is imperative upon a presiding officer to read and explain its contents so that the accused is kept posted on its details to enable him/her give a focused defence. That was not done in the matter at hand and we agree with Mr. Mbogoro that, on account of the omission; we are left with no other option than to expunge the document from the record of the evidence.

Since in the instant case, just as in **John Mghandi @ Ndunde v. Republic** (supra) the contents of the two documents were not read over, I have no option than to expunge the two pieces of evidence from the record.

As these two documents were crucial in metering the conviction and sentence, having expunged them from the record, I see no need to deal with the rest of the grounds as the remaining evidence cannot sustain the conviction. Accordingly, I allow the appeal.

Since in the circumstance of this case a retrial may not be appropriate. I hereby quash the conviction against both Appellants and set aside the sentence. The Appellants should be released immediately unless otherwise held for another lawful offence.

Dated at Dar es Salaam this 18th day of December 2020.



A handwritten signature in blue ink, consisting of several overlapping loops and lines.

J.L. MASABO

JUDGE