

IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

(APPELLATE JURISDICTION)

(DC) CRIMINAL APPEAL NO. 115 OF 2019

(Original Criminal Case No. 286 of 2018 of the District Court of
Singida at Singida)

KELVIN MAMKWE @ BENSON..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

6/5/2020 & 28/5 /2020

JUDGMENT

MASAJU, J

The Appellant, Kelvin Mamkwe @ Benson was charged with the offence of Unlawful Trafficking of Prohibited Plants contrary to section 11 (1) (d) of the Drugs Control and Enforcement Act No. 5 of 2015 in the District Court of Singida at Singida. He was convicted of the offence and sentenced to thirty (30) years imprisonment.

Aggrieved with the conviction and sentence, the Appellant has appealed to the Court. His Petition of Appeal bears eleven (11) grounds of

appeal in which he essentially argues that the prosecution case against him was not proved beyond reasonable doubt.

During hearing of the appeal in the Court on the 6th day of May, 2020 the Appellant appeared in person and adopted his Petition of Appeal to form part of his submissions in support of the appeal in the Court.

On her part, the Respondent Republic was represented by the learned State Attorney, Ngolo Dabuya, who supported the appeal for the reasons, thus;

That, the prosecution case was not proved beyond reasonable doubt against the Appellant in the trial Court. That, the evidence adduced did not implicate the Appellant with the crime. The drugs (bhang) according to PW1 was found on seat No. E in the Capricon Bus. The said seat was vacant. Nobody was on the said seat. PW4 contradicted PW1 by stating that the drugs were found on seat No. F where the Appellant sat. That, there was no any witness who testified in the trial Court that he saw the Appellant in possession of the said drug bag or saw the Appellant vacating seat No. E. That, prosecution case was built on suspicious thereby creating a lot of doubts to the benefit of the Appellant.

That is what was submitted by the parties in support of th appeal in the Court.

The court is inclined to agree with the parties that the prosecution case against the Appellant was not proved to the required standard, that is, beyond reasonable doubt. Inspector Mwanja (PW1) testified to have

received information from the informer on the alleged drugs being transported from Arusha to Singida by the Appellant who wore a pull-neck. He stopped the vehicle, Capricon Bus, and conducted search and found a bag with bhang inside on seat E1. That the seat was empty and the Appellant was seating at the front seat wore a pull-neck that is when they confirmed the allegations.

The Bus conductor, Hussein Kasaka (PW4), contradicted PW1's story by testifying that the bag with drugs was found on seat No. F2 and that, the owner was at the same seat. The contradictions damages the credibility of prosecution evidence.

The prosecution also failed to bring bus ticket as exhibit on what seat the Appellant had been designated to sit.

The offence was allegedly committed on the 1st day of February, 2017 but the Appellant was taken to Court on the 12th day of September, 2018 with no reasons thereto for the delay.

The Meritorious appeal therefore is hereby allowed. The conviction and sentence of thirty (30) years imprisonment is quashed and set aside respectively. The Appellant shall be released from prison forthwith, unless held for another lawful cause.



GEORGE M. MASAJU

JUDGE

28/5/2020