

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

APPELLATE JURISDICTION

(DC) CRIMINAL APPEAL NO. 62 OF 2018

(Original Criminal Case No.218 of 2018 of the District Court of Kahama at Kahama)

SHIJA KASIKAMWELI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

Date of Last Order: 29/04/2020

Date of Judgment: 22/05/2020

JUDGMENT

C. P. MKEHA, J

Before the District Court of Kahama, the appellant was arraigned in connection with an offence of being found in possession of narcotic drugs contrary to section 15A(1) and (2)(c) of the Drugs Control and Enforcement Act, No.5 of 2015 as amended by Act No.9 of 2017. The particulars of the offence charged were such that, on 09th day of June, 2018 at about 00:38hours at Kilimbu village within Kahama District in Shinyanga Region, the appellant was found in unlawful possession of 42.0 kilograms of cannabis sativa. When the charges were read over to the accused/appellant, the appellant pleaded in the following terms: "*Ni kweli.*" The said plea can be translated to mean: "It is true." Following the said plea, which was followed

by adduction of facts by the learned Prosecutor, the appellant was convicted as charged. He was thereafter sentenced to be jailed for five (5) years. He is now challenging the said conviction and sentence.

On 20/04/2020 the appellant wrote to his Worship the Deputy Registrar that, he would be pleased to see his appeal being heard in his absence. Therefore, on 29/04/2020 the court heard the present appeal in the absence of the appellant. Ms. Mbughuni learned Senior State Attorney represented the respondent. The learned Senior State Attorney supported the appeal. According to the learned Senior State Attorney, when the facts of the case were read over to the accused/appellant, he clarified his plea by saying that it was true that he was found possessing "*bhangi*."

In view of the learned Senior State Attorney the facts narrated by the learned Prosecutor before the trial court missed the key ingredient of the offence i.e "*unlawful possession*." According to the learned Senior State Attorney, the Prosecutor failed to disclose the key element in the facts. The learned Senior State Attorney was of the view that, from the narrated facts, it was different for the accused to understand the real nature of the offence. She concluded that, the plea was therefore equivocal hence the resultant conviction and sentence can not stand. The learned Senior State Attorney urged the court

to quash the conviction and sentence, relying on the decision in **Buhimila Mapembe Vs Republic (1988) TLR 174.**

As correctly submitted by the learned Senior State Attorney the narrated facts did not include the key element of the offence charged i.e unlawful possession. On strength of the case of **Buhimila Mapembe Vs Republic** (supra), the plea was equivocal. A plea of not guilty ought to have been recorded.

Trial judicial officers are reminded to remember the instructive words from **Adam Vs Republic (1973) EA 445**, cited in **Khalid Athuman Vs Republic, Criminal Appeal No.103 of 2005** (unreported) and **Hyasint Nchimbi Vs The Republic, Criminal Appeal No.109 of 2017** (Unreported):

"When a person is charged, the charge and the particulars should be read out to him so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in

his own words, and then formerly enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of the facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must, of course be recorded."

Had the trial Magistrate observed the above cited instructive words, she would not have convicted the appellant relying on facts that did not include the key ingredient of the offence charged. In other words the prosecutor failed to pass the minimal test obtaining in cases where accused persons plead guilty to the offences charged.

For the foregoing reasons the appellant's conviction is quashed. The earlier imposed sentence is set aside. The court orders immediate release of the appellant from custody unless he is held therein for other lawful cause.

Dated at **SHINYANGA** this **22nd** day of **May, 2020**.



C. P. MKEHA
JUDGE
22/05/2020

Court: Judgement is delivered in the presence of the appellant and Ms. Mbughuni learned Senior State Attorney.



C. P. MKEHA
JUDGE
22/05/2020

Court: Right of Appeal to the Court of Appeal of Tanzania explained.



C. P. MKEHA
JUDGE
22/02/2020