

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**(APPELLATE JURISDICTION)**

**(DC) CRIMINAL APPEAL NO. 5 OF 2021**

(Original Criminal Case No. 60 /2020 of Kigoma District Court, before Hon. E.B.  
Mushi – RM)

**RAYMOND JOHN.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

9<sup>th</sup> March & 28<sup>th</sup> April, 2021

**I.C. MUGETA, J.**

The appellant was charged with and convicted of the offence of unlawful possession of narcotic drugs. He was sentenced to thirty years imprisonment. Still protesting his innocence, he has appealed to this court with four grounds of appeal as follows: -

- 1. That, the prosecution side did not prove the charge beyond reasonable doubts.*
- 2. That, the chain of custody of the bhang (exhibit P2) was broken.*
- 3. That, the bhang (exhibit P2) was seized without a search warrant.*

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*4. That, appellant was convicted on the weakness of his defence not on the strength of the prosecution evidence adduced.*

On the hearing date the appellant appeared in person unrepresented. He prayed and the court allowed the respondent to start. The respondent was represented by Clement Masua, learned State Attorney. He opposed the appeal by arguing the second and third grounds collectively while the remaining grounds were dealt with independently.

On the first ground he submitted that the offence was proved beyond reasonable doubts since prosecution witnesses testified on how the appellant was arrested with the drugs which act was witnessed by the street Chairman who was invited to witness the search.

He further submitted that the drugs were examined by the Government Chemist expert who came to testify that the same were bhang. As if that was not enough, the learned State Attorney submitted, the appellant confessed the offence at the Police Station, at the trial he did not put questions to witnesses and did not object the tendering of the bhang as exhibit P2. Failure to cross examine witnesses, Mr. Masua argued, amounts to admission of the facts alleged.

On the combined second and third grounds, which cover the complaint on the chain of custody, the state Attorney submitted that the same was not broken and that proof thereof does not necessarily need be by paper

trail. It can also be proved orally. To buttress his argument, he cited the case of **Abas Kondo Gede v. Republic**. Criminal Appeal 472/2017, Court of Appeal (unreported) and **Chacha Jeremiah Murimi & 3 others v Republic**. Criminal Appeal no. 551/2015, Court of Appeal – Mwanza (unreported). In **Chacha J. Murimi** Case (supra) it was held:-

*"...documentation will not be the only requirement in dealing with exhibits. An exhibit will not fail the test merely because there was no documentation".*

Regarding the fourth ground, he submitted that the appellant was convicted on the strength of the prosecution evidence and not the weakness of his defence. That he was arrested during day time in the presence of witnesses and he confessed in the Caution Statement to have been found in possession of bhang which was proved to be narcotic substance by the Government Chemist.

In rejoinder, apart from his prayer to adopt his petition of appeal, the appellant complained that he was detained at the Police Station for about seven months without trial. He also complained about the handling of the case as the trial magistrate used to hold discussion with witnesses prior to recording of their evidence. He alleged that the magistrate was biased. He challenged the Village Chairman (PW2) who said they are unfamiliar with each other while they are neighbours.

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On long detention, Mr. Masua, when he rejoined, refuted the allegation because all time between arrest and arraignment the appellant was on Police bail.

I shall dispose of this appeal by assessing whether the charge was proved beyond reasonable doubts.

In this case, the prosecution must prove two things. Firstly, that the appellant was arrested with sixteen rolls of paper with suspicious contents. Secondly, that the contents of the rolls was bhang.

In its judgment, the trial court was satisfied that the 16 rolls contained bhang and that they were recovered from the appellant's possession. Consequently, he was convicted as charged and sentenced accordingly.

Briefly, the facts of the case are that F.8386 DC Leonard (PW1) and D.2926 DC Efraim (PW3) arrest the appellant at Majengo, Uvinza and upon searching into his bag he was found with 16 rolls of bhang. This fact was confirmed by Josephat Nzamba (PW2) a civilian who was called by the two Policemen to see the contents in the bag as he passed by the scene of crime. The bhang was handed over to G. 3374 D/CPL Edward (PW5) who stored it before he handed it over to G.7996 DC Albert (PW4) who took the same to Elia Tumaini (PW9) of the Weight and Measures Unit where it was weighed and found to measure 35 grams.

G. 6252 DC Abel (PW7) transported the bhang to the Government Chemist Laboratory in Mwanza for examination. Paul Mtango (PW8) examined the contents of the 16 rolls and found the same to be Cannabis Sativa. While PW1 tendered the seizure certificate as exhibit P1 and the 16 rolls of bhang as exhibit P2, Paul Mtango tendered his examination report of the contents of the 16 rolls at the laboratory as exhibit P4. G.3139 DC Advent (PW6) recorded the caution statement of the appellant which was admitted as exhibit P3.

The appellant denied to have been arrested with the bhang. His case was that the Police arrested him and demanded from him to show the two other people he was with who ran away before his arrest. That he failed to do so consequently he was detained, tortured and denied bail.

I shall determine first whether the 16 rolls contained bhang. According to the evidence on record, particularly that of Paul Mtango, there is no dispute that the 16 rolls contained cannabis sativa. I am also satisfied that the handling of the bhang from one witness to another did not break any rule on keeping the chain of custody. As submitted by the learned State Attorney, the witnesses' oral evidence well proved the chain of custody.

The next issue for determination is whether the appellant was arrested with those 16 rolls of bhang.



The learned State Attorney would answer the question in the affirmative because the appellant was arrested at day time, did not object tendering of exhibits and did not put questions to some witnesses. However, the issue is the reliability of the prosecution's evidence particularly PW1 and PW3 who arrested the appellant. Relying on the Caution Statement and the evidence of PW1 and PW3 (the arresting officers), the learned trial magistrate was satisfied that the appellant was arrested with the bhang. She found the evidence of Josephat Nzamba (a civilian) as corroborating that of PW1 and PW3. The learned magistrate found: -

*"PW1 and PW3's evidence do corroborate with the evidence of PW2 (street Chairman) ...".*

With respect the learned trial magistrate misapprehended the evidence. According to Josephat, he found the appellant having been arrested. Therefore, he did not witness the arresting process. He was just called by PW1 to be shown the contents of the bag which, allegedly, was seized from the appellant. PW1 himself testified: -

*"Before leaving the scene of crime I called the street Chairman (Josephat Zamba) and informed him I showed him the said bhangi".*

On his part Josephat Nzamba testified: -

*"I found him arrested the accused and he said he arrested him with 16 dices of bhang, I asked to open the said bhang which was covered in gazette (sic) and packed in blue bag".*

It follows, therefore, that Jospehat Nzamba's involvement cannot corroborate PW1 and PW3 on their evidence that they arrested the appellant with the bag which contained bhang. He found the bag already in the possession and control of the Police Officers and not the appellant.

Can the caution statement corroborate PW1 and PW3 on their evidence that they arrested the appellant with the bhang? I do not think so. This is because I find the caution statement to be untrue. A Caution Statement can be acted upon by a court of law only and only if it is believed to be a true admission of the maker. The caution statement in this case contains contradictory statements which cannot be reconciled. Firstly, the appellant states that he was given a bag by another man who is "bodaboda" rider. Then he changes that the bhang was his and finally he changes again to stating that the bhang is a property of Rashid Juma who sent him to collect it. These statements are prevarications which does not amount to a true confession.

Further, beside its falsehood, it contradicts the other prosecution evidence on how and where the appellant was arrested. According to PW1 and

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PW3, they arrested the appellant at Majengo, Uvinza. The confession on the other hand says: -

*"... kijana mmoja wa bodaboda ambaye kwa jina simfahamu ambaye ni mweupe mrefu, na aliniambia kuwa kumchukulie mzigo wake ambao ulikuwa ndani ya nyumba ya HAMISA JUMA na kwenda kumchukulia ndani. ... bodaboda huyo aliondoka na baada ya muda askari polisi alifika eneo lile na kunikuta nikiwa nahesabu misokoto hiyo ya bangi..."*

While the two Policemen allege they arrested him at Majengo, Uvinza, his evidence in the caution statement is that he was arrested at the house of Hamisa Juma.

It is my view that unlike where the caution statement is the only evidence to be relied upon by the prosecution, it ought to be tendered with circumspection because once admitted it shall be considered first as evidence of the prosecution before it is used against the maker. In such a case, when it conflicts with the rest of the prosecution evidence on a material particular, and the conflict cannot be resolved, that is enough a reason to doubt the prosecution's case. In this case not only that the caution statement contains false statements but also contradicts the other evidence on how and where the appellant was arrested. Since the issue is whether the appellant was arrested with the bhang, the place and how



he was arrested is a material fact and the uncertainty and contradictions brought by the caution statement raises a reasonable doubt in the prosecution's case. Beside the caution statement there is yet another evidence that contradicts the arresting officers. It is the evidence of Japhet Nzamba. When cross examined by the appellant he said that he met the Policemen and the appellant at "*Uvinza Kati near to relini*" not at Majengo as PW1 and PW3 testified. These contradictions make the evidence of those who arrested the appellant on where they arrested him and what he was arrested with doubtful and unreliable.

As orbiter dictum, let me wind up with a sad story about the trend in this jurisdiction on the time the accused persons spend under detention before being charged in a court of law. According to the charge sheet and the evidence, the appellant was arrested on 3/10/2019. However, he was arraigned in court on 2/6/2020, nine months later. As already indicated he complained about this detention when he argued the appeal. The learned State Attorney responded that during the period between arrest and arraignment the appellant was admitted on police bail. However, this is a mere submission from the bar which is not borne out in evidence. In his defence the appellant testified: -

*"He took me to the police, I was tortured so that  
I can say where are the two people I told them*

*that I don't know them they refused to grant me bail with no reasons".*

This evidence is uncontroverted. Detaining a suspect without bail or trial from 3/10/2019 to 2/6/2020 is unlawful and may create doubts on the genuiness of the complaint against him. Prosecution is dissimilar from persecution. The former ought to be lawful and transparent. Prosecution agencies have a citizenship and legal obligation to be accountable to a lawful process to enhance public trust in the justice system. Anything to the contrary is invitation of anarchy. Citizens might not find a reason to obey laws if the State is at the forefront to break them. Unfortunately, I am witnessing a growing trend of unexplained long detention of suspects. To mention but a few, I encountered a similar situation in **Nuhu Edward v. Republic**, Economic Appeal No. 3/2020, High Court, Kigoma Registry (unreported) where the suspect was detained for almost two months. In **Damas Lucas and Another vs Republic**, Criminal Appeal No. 4/2021, High Court Kigoma Registry (unreported) the suspects were detained from 30/1/2020 to be charged in court on 12/5/2020! Justice ought to be in accordance with the laws.

For the foregoing, I am satisfied that the appellant was wrongly convicted. I hereby allow the appeal. Appellant is to be released from the prison unless otherwise lawfully held for another cause.



*Mugeta*  
**I.C. Mugeta**  
**Judge**  
**28/4/2021**

**Court:** Judgment delivered in chambers in the presence of the appellant and Benedict Kivuma, State attorney for the respondent.

**Sgd: I.C. Mugeta**  
**Judge**  
**28/4/2021**