

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MTWARA)  
AT MTWARA**

**CRIMINAL APPEAL NO 78 OF 2020**

*(Originating from Criminal Case No. 27 of 2020 of Lindi District Court)*

**ZUBERI NASSORO MOHAMED..... APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**JUDGMENT**

*Hearing date on: 09/6/2021*

*Judgment date on: 14/6/2021*

**NGWEMBE, J:**

Zuberi Nassoro Mohamed is in this court challenging the trial court's conviction and sentence of thirty (30) years imprisonment. The appellant at the age of twenty four (24) years was found in unlawful possession of prohibited seeds contrary to section 11 (1) (b) of Drugs Control and Enforcement Act. Particulars of the offence indicates that on 22<sup>nd</sup> day of March, 2020 at Nachingwea street within Municipality and region of Lindi, was found in possession of seeds used to produce Narcotic Drugs to wit; 50 gram of cannabis sativa seeds.

Being so arraigned in court and called up to plead, he said *"It is true I was found in possession of seeds used to produce cannabis sativa. What they find me with was cannabis sativa seeds, I buy them from persons"*. When facts were read over to the accused, the court did not ask the accused to plead on those facts. Instead he proceeded to sign the said facts.

Following such stage of plea, the court proceeded to enter conviction, subsequently, sentenced the appellant to imprisonment for a period of thirty (30) years.

Having found himself in jail, immediately, he woke up with notice of appeal and finally, appealed to this court armed with six (6) grievances centered on failure of the trial court to read charge sheet and its ingredients to the accused. Also raised the issue on admissibility of exhibit PE2 without expert examination from Government Chemistry.

When this appeal was called for hearing, the appellant advocated himself while Mr. Wilbroad Ndunguru – senior State Attorney represented the Republic/respondent. When the appellant was invited to submit on his grounds of appeal, had no useful arguments to assist this court, rather relied on his grounds of appeal and prayed this court to consider them and decide accordingly.

Mr. Ndunguru supported the appeal based on the ground of plea that was contrary to the charge sheet. Added that it seems the appellant did not understand the contents of the charge sheet. Further added that the



alleged seed found with the appellant was not examined to prove scientifically, that they were seeds of cannabis sativa. Ground three (3) of the appeal, the appellant complained on failure of prosecution to prove those seeds if were seeds of cannabis sativa . Rested by urging this court to order retrial so that justice may be seen to be done.

Having summarized both parties arguments, may begin my consideration by borrowing a leaf from the case of **Safari Deemay's Vs. R, Criminal Appeal No 269 of 2011** (unreported) whereby the Court of Appeal provided a living guidance as follows: -

*"Great care must be exercised, especially where an accused is faced with a grave offence like the one at hand which attracted life imprisonment. We are also of the settled view that it would be more ideal for an appellant who has pleaded guilty to say more than just "it is true". A trial court should ask an accused to elaborate, in his own words as to what he is saying "is true".*

In similar vein, the court proceeded to guide on how to record unequivocal plea of guilty in the cases of **Venister s/o Niyondanyi Nestory Vs. R, Criminal Appeal No 63 of 2020** and in the case of **Foster (Haulage) Ltd Vs. Robert [1978] 2 ALL ER 751** where the court held:-

*"It is trite law that a plea of guilty involves an admission by an accused person of all the necessary legal ingredients of the offence charged. Consequently, for a plea to be equivocal the accused must add to the plea of guilty a qualification which, if true, may show that he is not guilty of the offence charged".*



Being guided by these principles of law as amplified in the cited precedents, unequivocal plea of guilty must be properly pleaded, properly recorded, and must be unqualified. Otherwise, any qualification to the plea of guilty renders the plea equivocal.

In any event, offences which attract long imprisonment like the one of being unlawfully found in possession of prohibited seeds, which attract minimum sentence of thirty (30) years imprisonment; offences related to rape or unnatural offences; Wildlife related offences; Economic related offences; and alike, should be treated with due care. I would prefer such plea may be treated like plea on murder cases, where the accused even if he pleads guilty the court will record otherwise to allow the prosecution to produce evidences.

Such long incarceration in prison, the court must be satisfied beyond reasonable doubt that the evidence adduced in court are unshakably pointing to non than to the accused himself.

Since the legislature placed certain offences to have minimum sentence of either twenty years or thirty years or life imprisonment, then prudence demand that judiciary should give breath to those laws by refusing to accept plea of guilty with a view to allow prosecution to prove the offence beyond reasonable doubt.

This appeal is one of the offences which attract minimum sentence of thirty years. Above all, as rightly argued by the learned senior State Attorney, the plea of the appellant was made without understanding the nature of the




offence. Rightly so, the trial court ought to have entered not guilty to his plea in order to allow the prosecution to produce evidence in support to the accusations.

Statutorily, the conviction founded on plea of guilty is not appealable as per section 360 of CPA, as quoted hereunder:-

*"No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence".*

However, the court gave breath on this section in the case of **Laurent Mpinga Vs. R, [1983] T.L.R 166**, when held:-

- i. That the event of taking into consideration the admitted facts, his plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty;*
- ii. That he pleaded guilty as a result of mistake or misapprehension;*
- iii. That the charge laid at his door disclosed no offence known to law; and*
- iv. That upon the admitted facts he could not in law have been convicted of the offence charged.*

As rightly submitted by Mr. Ndunguru, the plea of the appellant was due to ignorance or misapprehension. Even if the appellant could have plead not guilty, yet the court could not convict him in the absence of scientific proof 

that found seeds in possession of the appellant were seeds of Cannabis Sativa.

Accordingly, the effect of equivocal plea of guilty is to order retrial as prayed by the learned senior State Attorney. However, this will depend on the nature and circumstances of each case. Perusing the oldest precedents of East African Court of Appeal in the case of **Fatehali Manji Vs. R, (1966) EA 343** provided a living guidance as quoted hereunder:-

*"In general, a retrial will be ordered only when the original trial was illegal defective, it will not be ordered where conviction is set aside because of insufficiency of evidence or for the purpose of enabling the prosecution to fill gaps in its evidence at the trial.....each case must be decided depending on its own facts and circumstances and **an order of retrial should only be made where the interests of justice require**"*

Moreover, **Black's Law Dictionary Eighth Edition**, defines the term *trial de novo* to mean a new trial on the entire case, that is, on both questions of facts and issues of law; as if there had been no trial in the first instance. Trial *de novo or retrial* is simply, conduct trial afresh, what was tried before is null and void as if it never existed. Likewise the Court of Appeal in the case of **Peter Mutabuzi Vs. R, [1968] H.C.D 149** Held:-

*"Each case must depend on its own particular facts; re-trials should be ordered only **"where the interests of justice require it** and should not be ordered where it is likely to cause an injustice to an accused person"*



The fundamental issue for consideration to order retrial is the interest of justice of both parties. In this case the issue is whether the interest of the appellant will be preserved when the order for retrial is issued. In this appeal, the appellant was not tried and no evidence were adduced in court, because the appellant was found guilty due to his plea of guilty. Secondly, the appellant has already spent one year and three months in jail, in such circumstances, whether to order retrial will satisfy the interest of justice? Even if I will agree with the learned senior State Attorney, yet retrial won't be possible because at the beginning there was no trial, rather this court may order re-pleading. In the circumstances of this case, I find such order will cause more pain to the appellant, while the outcome may be acquittal due to poor investigation of the case and lack of proof that those seeds were actually seeds of Cannabis Sativa.

In totality and for the interest of justice, I find this appeal is meritorious same is allowed, consequently order an immediate release of the appellant from prison, unless otherwise, lawfully held.

**I accordingly Order.**

Dated at Mtwara in Chambers this 14/6/2021



**P.J. NGWEMBE**

**JUDGE**

**14/6/2021**



**Court:** Judgment delivered at Mtwara in Chambers on this 14<sup>th</sup> day of June, 2021 in the presence of the appellant and Mr. Wilbroad Ndunguru, Senior State Attorney for the Republic/respondent.

**Right to appeal to the Court of Appeal explained.**



**P.J. NGWEMBE**

**JUDGE**

**14/6/2021**

