

IN THE HIGH COURT OF TANZANIA

SONGEA DISTRICT REGISTRY

AT SONGEA

DC. CRIMINAL APPEAL NO. 11 OF 2021

(Original Cr. Case DC No. 17 of 2020 of the Nyasa District Court at Nyasa)

CHARLES S/O MATHAYO NGALUWILA @ BAMBO..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

9.8.2021& 24.8.2021

U.E.Madeha, J

At Nyasa District Court in Ruvuma region, the appellant, namely, Charles Mathayo Ngaluwila @ Mbambo was charged with the offence of trafficking narcotic drugs, contrary to **section 15A (1) and (2) (c) of the Drugs Control and Enforcement Act (Cap. 95 R.E. 2019)**, (herein referred to as the ACT). The appellant was sentenced to serve thirty years in prison but he was dissatisfied with the trial court's sentence and conviction. Hence, he appealed to this Court. The appellant was convicted and sentenced after entering his own plea of guilty. The accusation against the appellant was that, on October 13, 2020, at Duhuma village within Nyasa District, the appellant was on his way to Mitopolo village. He was arrested

by a police officer after being found with 3 kg and 550 grams of cannabis which he was transporting by his motorcycle. The appellant agreed to have 3 kg and 500 grams of cannabis. He was taken to court where he pleaded guilty, convicted and sentenced to serve 30 years imprisonment.

When the appeal was placed for hearing, the appellant was represented by **Mr. Josephati Kazaula**, the learned advocate, whereas the respondent was represented by **Mr. Emmanuel Baligila**, the State Attorney.

In view of the grounds of appeal raised, the issue here is whether the appellant's plea of guilt was unequivocal. The argument submitted by **Mr. Josephati Kazaula**, the learned advocate, who faulted the decision of the Court below, that the sentence pronounced by the trial magistrate was not clear and prayed the Court to look at the issue of the trial court proceedings.

Following the appellant's advocate submissions, **Mr. Emmanuel Baligila**, the learned State Attorney, supported the appeal, based on the ground that the appellant's plea of guilty was ambiguous or equivocal due to the fact that the particulars of the offence did not match with the facts of the case read before the court. The indictment states that, the appellant

committed an offence at Marini Village, whereas, in particulars of the offence, it indicates that he committed the offence at Duhuma Village. This must have been determined by the trial magistrate as a plea of not guilty. The remedy is to quash the conviction and set aside the sentence, and remit the case records to a new trial magistrate for a new trial. With the foregoing response of the learned state attorney, the appellant learned advocate had nothing to add in his rejoinder.

I agree with the Senior State Attorney that the charge sheet has a fundamental mistake, which indicates that the crime was committed at Marini Village. According to the prosecution's memorandum of agreed facts filed in court, the offence was committed at Duhuma village and Mitopolo village. The records do not specify if Duhuma, Marini and Mitopolo villages are located in the same location. As a result, there are three distinct villages in which the offence is alleged to have been committed. Therefore, the plea of the accused was an unequivocal plea of guilty, there is contradiction as to which village the appellant committed the offence. The particulars of the offence in the charge sheet did not match with those facts of the case which were read before the court.

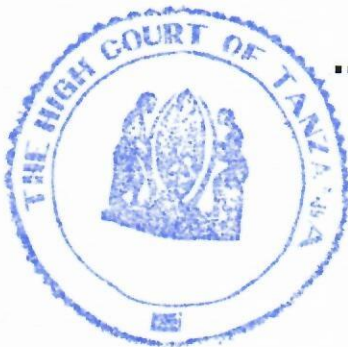
In the final result, I accede to invoking the revision power under **section 373 of the Criminal Procedures Act, (Cap.20 R.E 2019)** and in the fine, the entire trial proceedings are nullified with an order for a new trial to be presided by another magistrate. The new trial should commence and be conducted as expeditiously as possible and, in the meantime, the appellant should remain in custody. Order accordingly.

DATED and DELIVERED at SONGEA this 24th day of August 2021.




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U. E. MADEHA
JUDGE
24/8/2021

COURT: The judgement delivered this 24th day of August, 2021 in the presence of the appellant in person and Ms. Hellen Chuma, State Attorney for the respondent/Republic.




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U. E. MADEHA
JUDGE
24/8/2021