

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

AT TANGA

CRIMINAL APPEAL NO. 9 OF 2020

**(From Judgment of the District Court of Tanga at Tanga
in Criminal Case No. 90 of 2018)**

SHABANI S/O HAMAD @ SEIF APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

MKASIMONGWA, J.

In the District Court of Tanga District, the appellant one SHABANI HAMAD @ SEIF stood charged with Being in Unlawfully Possession of Narcotic Drugs Contrary to Section 11 (2) (d) of the Drugs Control and Enforcement Act No. 5 of 2015. He was convicted of the offence as charged and accordingly sentenced to thirty (30) years imprisonment. He is aggrieved by both the conviction and sentence. He therefore preferred this appeal challenging the two. In the Petition of Appeal filed for that purpose the Appellant listed three grounds of appeal which are:-

- 1. The Trial Magistrate erred in law and in facts by relying on the forensic report prepared by a Police Officer which is not a competent report proving Catha edulis "Khat" to be narcotic drugs.*




2. *The Trial Magistrate erred in law and in facts by convicting the appellant while the chain of custody of the said Catha edulis "Khat" was not established or did break.*
3. *The Trial Magistrate erred in law and in facts by convicting the appellant without prosecution calling the bus conductor who was the important witness as prosecution witnesses (PW1 and PW2) testified that it was the bus conductor who confirmed for them that the said "Mirungi" belonged to the appellant.*

On the date the appeal was placed before the Court for hearing, whereas the Appellant appeared in person, Mr. Winluck Mangowi (State Attorney) appeared on behalf of the Respondent Republic. Before stating the submissions made to the Court by the parties, I find it material worth to show, though briefly, facts of that case, as one may apprehend from the evidence on record. They are as that: On 24/12/2015, the Appellant was boarding the Satellite Bus from Tanga to Dar es Salaam. The Bus was stopped at Pongwe Weighing Bridge by Police Officers namely; A/Insp. Juma Waridi (PW2) and E. 6166 Cpl. Mrisho (PW5) among others. The Officers entered and searched into the Bus. In the search a certain bag was suspected. PW5 seized the bag which was identified to belong to the Appellant and upon searching into the bag there were found in bundles leaves which they suspected to be mirungi. A certificate of Seizure was



prepared and signed. The Appellant was arrested and taken to the Police Station at Chumbageni along with the seized items. The items were handed over to the exhibit keeper, one E. 187 D/Cpl. Juma (PW1). The case was assigned to G. 5326 D/C Lucas (PW6) for investigation. The later interrogated the suspect (Appellant) and recoded his cautioned statement as the later had confessed committing the offence. On 25/12/2015, PW6 was handed over with the seized suspected Mirungi by the Store Keeper (PW1) and packed and sealed them in the presence of the Appellant. After the sealing the exhibit was returned to PW1. On 26/12/2016, WP. 4545 D/Cpl. Asha (PW4) was given exhibit by a Police Officer one Juma and took it to the Forensic Office at Dar es Salaam for further investigation. At the office, the exhibit was received, labeled and laboratory tested by a Government Chemist Officer one Idaya Yasini Kabelege (PW4). After she had dealt with it PW4 repacked and sealed the exhibit which PW3 took it back to Chumbageni Police Station where she handed over to Cpl. Juma (PW1). PW4 again prepared a report following examination of the exhibit. On 28/12/2015 PW1 gave to PW6 the said Exhibit and it was accordingly destroyed following Order of the Magistrate to that effect.



When was invited to argue the appeal the Appellant did not have anything material to state in expounding the grounds of the Appeal. He essentially repeated what he stated in the grounds.

On the other hand, Mr. Mangowi (SA) considered the first and second grounds of appeal and found merit in the appeal and hence supported it. As to the first ground of appeal Mr. Mangowi submitted that it was not evidenced before the trial Court if Idaya Yasin Kabelege (PW4) was a registered Government Chemist. The evidence is silent if the witness was gazetted and if so through which Government Notice. The learned State Attorney submitted that in the absence of such identification of the Chemist it is doubtful if PW4 was the proper person to conduct examination of the exhibit. As such the Chemistry Examination Report tendered **(Exhibit P2)** is doubtful.

As regards to the second ground of appeal Mr. Mangowi submitted that going by the evidence on record, it is clear as to broken chain of custody of the exhibit alleged to have been seized, which fact left the prosecution case doubtful. He said that PW1 (the exhibit keeper at Chumbageni Police Station) did on 24/12/2015 at 10:30 am receive eight (8) parcels/bundles of leaves suspected to be Mirungi. The witness does



not mention from whom he received the alleged Mirungi. On 26/12/2015 he handed over the alleged Mirungi to D/Cpl. Lucas (PW6) for him to take it. to the Chemist. PW1 is silent if the exhibit was returned to him since when it was taken by C/Cpl Lucas (PW6). The silence contradicted the testimony of PW6 that on 26/12/2015 he took the items from PW1 (D/Cpl.Juma) for packing purposes and then returned it back to him. It also contradicts that testimony of PW6 which was to the effect that on 28/12/2015 he collected the exhibit from PW1 for destruction purposes. The evidence adduced by PW1 again contradicts that testimony given by WP. 4545 D/Cpl. Asha (PW3) that on 26/12/2015 she was given the exhibits by a police officer Juma for her to take it to the Chemist and she surrendered the same back to Cpl. Juma, (PW1) after examination by the Government Chemistry Officer (PW4).

Mr. Mangowi submitted further that the Prosecution had produced to the Court the Inventory Form prepared and by which the Magistrate ordered for destruction of the exhibit, to be an exhibits. The same was so admitted and marked **Exhibit P4**. He said upon admission of the exhibit the witness (PW6) ought to have read it to the Court which, he did not.



doubt. Mr. Mangowi (SA) acting on behalf of the respondent Republic was of the opposite view. In respect of the first ground of appeal, he said it is doubtful if the Chemistry Examination Report **(Exhibit P2)** was prepared by a competent person for the person Hidara Y. Kabelege (PW4) was not proved to have been gazetted to conduct such examination. I have considered this submission. What is clear is that in her testimony PW4 tendered to the Court the Chemistry Examination Report **(Exhibit PW2)**. The opening paragraph of the Exhibit reads as follows:-

"I Hidaya Y. Kabelege of Forensic Bureau Tanzania Police Force being an officer duly authorized to examine and analyse samples/exhibits and appointed as Government Analysis under Section 203 (4) of the Criminal Procedure Act, Cap 20 [RE 2002] and published in the Government Notice No. 146 of April, 03rd, 2015, hereby certify as follows"

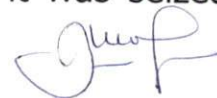
The exhibit being part of the evidence given by PW4, in my view clears the doubt Mr. Mangowi had against the testimony of PW4.

As to the chain of custody, indeed going by the testimony given by E. 8187 D/Cpl. Juma (PW1) the Exhibit Keeper at Chumbageni Police Station, the later does not mention from who he sometime on 24/12/2015 received what was suspected to be Mirungi. In that premise, it cannot be certainly



stated that the exhibit he received is nothing but the Mirungi seized by PW2 and PW5 in possession of the Appellant. The witness (PW1) going by his testimony is silent if the exhibit was sometime on 26/12/2015 taken from the store (him) by PW6 D/C Lucas for it to be packed and was then returned to him for safe custody. Again the evidence given by PW1 is silent if on 26/12/2015 he gave the exhibit to WP 4545 D/Cpl. Asha (PW3) for her to take it to the Chemist and that the same was returned to him sometime later as PW3 stated in her evidence.

PW1 also was not aware (going by his testimony) if on 28/12/2015 he handed over the exhibit to D/C Lucas (PW6) for destruction purposes against what was stated in evidence by PW6. As stated by Mr. Mangowi, there was break in the chain of custody of the exhibits which raises doubts as whether the Mirungi alleged to have been found in possession of the Appellant was the same, kept in the police Exhibits Store by PW1 and that it was the same packed by PW6 and if it is the same sent to the Chemist for laboratory test; further, that it was destructed as the inventory, **Exhibit P4** evidences. The doubt could only, in my view, be cleared by producing evidence showing documentation of the chlorological movement of the exhibit from one hand to another from when it was seized to the

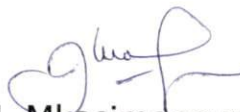


time of destruction. This was not done, which fact left the prosecution case not proved beyond doubt. As such the trial Court erred when found the appellant guilty of the offence and when it convicted him as charged.

In event, I find merit in the appeal. The same is allowed and therefore the conviction is quashed and the sentence set aside. It is hereby ordered that the appellant be immediately released from jail if he is not therein for other lawful causes.

DATED at TANGA this 10th of June, 2021.




E. J. Mkasimongwa

JUDGE

10/06/2021