

IN THE HIGH COURT OF TANZANIA
(SONGEA DISTRICT REGISTRY)
AT SONGEA

MISC. CRIMINAL APPLICATION NO. 14 OF 2020

(Originated from Mbinga District Court Criminal Case No. 145/2018)

THE DIRECTOR OF PUBLIC PROSECUTIONS..... APPLICANT

VERSUS

APRON SALUMON NCHIMBI..... RESPONDENT

EX-PARTE- RULING

28.07.2021 & 04.08.2021

U. E. Madeha, J.

The applicant calls upon this court to examine, revise and restore Criminal Case No. 145 of 2018 through chamber summons supported by an affidavit sworn by Mr. Emmanuel Bangila, the learned state attorney for the applicant. The chamber summons was filed under **section 372 and 373 (1) (b) of the Criminal Procedure Act, (Cap 20 R.E. 2019)**, (hereinafter referred to as the CPA). The application was filed against Apron Salumon Nchimbi. The application was heard ex-parte after unsuccessful attempts to serve the respondent with a court summons through a substituted service on March 24, 2021. The prayers and orders sought in a chamber summons are as follows:

1. *This Court may be pleased to call for and examine the records of the criminal case No. 145 of 2018 before Mbinga District Court for the purpose of satisfying itself as to the correctness and legality of the order of acquitting the respondent under section 226 (1) of the Criminal Procedure Act, Cap 20 [R.E.2019], and to order that criminal case No. 145 of 2018 be restored and continue where it ended.*
2. *This Court is pleased to hold that, Mbinga District Court had no power to acquit the respondent under section 226 (1) of the CPA.*
3. *This Court is pleased to reverse the order of the Mbinga District Court by acquitting the respondent under section 226 (1) of the CPA and the order of restoration of Criminal Case No. 145 of 2018 to start where it ended.*

Briefly the prosecution case was that, the respondent was charged with the offence of unlawfully possession of narcotic drugs contrary to **section 17 [1] [b] of The Drugs Control and Enforcement Act (Cap.95 R.E 2019)**. He was unlawfully found in possession of 1480 grams of narcotic drugs commonly known as bhang. This application was filed after the trial magistrate who handled criminal case No. 145 of 2018 on January 30, 2020,

issued an acquittal order under section 226 (1) of the CPA. The reason for the acquittal order was non-appearance of the prosecution. As a result of the absence of prosecution, the trial magistrate decided to acquit the respondent.

Mr. Shabani Mwigole, the learned Senior State Attorney, told the court that he was seeking the court to revise the order of the trial court dated 30th January, 2020 in which the respondent was acquitted under section 226 (1) of the CPA. He stated that, the trial magistrate dismissed the charge and acquitted the respondent as the prosecution failed to appear before the trial court when the case was called for hearing. Section which was used to acquit the respondent was amended under **section 19 [a] of the Written Laws (Miscellaneous Amendment) Act, No.3 of 2011**, the word acquittal was changed and replaced by the word discharge under section 226 [1] of the CPA. According to the provision mentioned above, the court cannot acquit but must discharge the accused. He prayed that, his application should be considered and the word acquitted should be replaced by the word discharged.

Having heard the submission made by the Senior State Attorney, I concur with the Senior State Attorney's statement that the trial court's order of acquitting the respondent on 30th January 2020 was unlawful. Since the section which allows the court to acquit the accused was amended. I hereby quote **section 226(1) of the Criminal Procedure Act (Cap.20 R.E 2019)** which allows the court to dismiss charge and discharge the accused person.

"226. -(1) Where at the time or place to which the hearing or further hearing is adjourned, the accused person does not appear before the court in which the order of adjournment was made, it shall be lawful for the court to proceed with the hearing or further hearing as if the accused were present; and if the complainant does not appear, the court may dismiss the charge and discharge the accused with or without costs as the court thinks fit."

Consequently, the application is partly granted. I accede to invoking the revision power under **section 373 (1) (b) of the Criminal Procedure Act (Cap. 20 R.E 2019)** by setting aside the order of the trial court which

acquitted the respondent of the offence which he was charged with. The acquittal order is hereby substituted with the discharging order. If the prosecution is still interested in the case, they may institute a comparable criminal case. Order accordingly.

DATED and DELIVERED at SONGEA on 4th day of AUGUST 2021.



A handwritten signature in blue ink, appearing to read "U. E. MADEHA", is written over a horizontal dotted line.

U. E. MADEHA
Judge
4/8/2021

COURT: The Ruling was delivered this 4th day of August 2021 in the presence of Ms. Tumaini Ngiluka, Senior State Attorney for the applicant/Republic, and in the absentia of the applicant, the respondent to be notified.



A handwritten signature in blue ink, appearing to read "U. E. MADEHA", is written over a horizontal dotted line.

U. E. MADEHA
Judge
4/8/2021