

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

**(DC) CRIMINAL APPEAL NO. 41 OF 2020**

(Original Criminal Case No. 408 of 2017 of the District Court of Singida at Singida)

**SAID IBRAHIM@MTINANGI ..... APPELLANT**

**VERSUS**

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

*14/12/2021 & 23/12/2021*

**JUDGMENT**

**MASAJU, J**

The Appellant, Said Ibrahim@ Mtinangi, was charged with, and convicted of UNLAWFUL POSSESSION OF NARCOTIC DRUGS contrary to section 11(1) (d) of the Drugs Control and Enforcement Act, 2015 in the District Court of Singida at Singida. He was sentenced to serve thirty (30) years imprisonment, hence the appeal in the Court. His Petition of Appeal is made up of seven (7) grounds of Appeal, including the ground that the prosecution case against him before the trial Court was not proved beyond reasonable doubt.

When the Appeal was heard in the Court on the 14<sup>th</sup> day of December, 2021, the layman Appellant appeared in person. He prayed the Court to adopt his grounds of Appeal to form submissions in support of his Appeal in the Court. He further prayed the Court to intervene accordingly.

The Respondent Republic in the service of Ms. Rachel Tulli, the learned State Attorney, did not take issue with the appeal because the prosecution case before the trial Court had not been proved beyond reasonable doubt. The reasons thereof being that, the Government Chief Chemist, Tupiligwe Ruben Mwaisaka (PW6), did not identify the alleged Narcotic Drug, Prosecution Exh. P2, before the trial Court. That, since there lacks proof that the specimen examined by the witness (PW6) was actually Narcotic drug (bhang), it was questionable that the Appellant was found in possession of the alleged narcotic drug.

Secondly, all the documentary evidence by the prosecution, namely certificate of seizure, Prosecution Exhibits, "P1", "P4", "P5" & "P6", save the Cautioned Statement (Exh. P3) were not read over to the Court. The Appellant did not therefore know the nature of prosecution case evidence so that he could defend himself against the charge from the well informed position. That being the case, the prosecution Exhibits P1, P4, P5 & P6 severally and together could be expunged from the record of the trial Court. That done, the remaining prosecution evidence would be too thin to sustain conviction.

The Court agrees with the reasoning of the parties on this Appeal. The prosecution documentary evidence exhibits P1, P4, P5 & P6 which were not read over to the trial Court so as to afford the Appellant to know the nature of the evidence against him for his would be well informed defence are hereby severally and together expunged from the record of the trial Court. That done, the prosecution case would be hanging on a very thin thread of evidence.

It is also equally true that since the Government Chief Chemist (PW6) did not identify the alleged narcotic drug (Exh. P2) that the same was

actually narcotic drug bhang before the trial court, it follows that there was no certainty that alleged Appellant was found in possession of the alleged narcotic drug (Exhibit P2).

That said, the Court is of the considered position that the prosecution case against the Appellant in the trial court was not proved beyond reasonable as it has been so rightly advised by the parties to the appeal. The appeal is hereby, therefore allowed accordingly. The Appellant's conviction and sentence of thirty (30) years imprisonment thereof respectively, are hereby quashed and set aside. The Appellant shall be released forthwith from prison unless there was a lawful cause to the contrary.



  
GEORGE M. MASAJU

**JUDGE**

23/12/2021