

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

**DC CRIMINAL APPEAL NO. 185 OF 2020**

(Originating from the District Court of Dodoma at Dodoma in Criminal Case No. 37 of  
2019)

**TUMAINI MAKANI ..... APPELLANT**

**VERSUS**

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

*23/12/2021 & 27/12/2021*

**JUDGMENT**

**MASAJU, J**

The Appellant, Tumaini Makani, was charged with, and convicted of TRAFFICKING NARCOTIC DRUG contrary to section 15A (1) (2) (c) of the Drug Control and Enforcement Act, 2015 as amended by section 9 of the Drug Control and Enforcement (Amendment) Act, 2017 in the District Court of Dodoma at Dodoma. He was sentenced to serve twenty (20) years imprisonment, hence the appeal in the Court against the said conviction and sentence. That the prosecution case was not proved beyond reasonable doubt, due to contradictory evidence and that there was procedural irregularities.

The layman Appellant appeared in person to ague his Appeal in the Court on the 10<sup>th</sup> day of December, 2021 when the appeal was heard in the Court. He adopted his grounds of appeal to form his submissions in support

of the appeal. He prayed the Court to allow the appeal because allegedly he did not commit the offence.

The Respondent Republic, in the service of Ms. Rachel Tulli, the learned State Attorney, contested the appeal allegedly because the prosecution case against the Appellant in the trial court had been proved beyond reasonable doubt. That, the Appellant's selling of the narcotic drug(bhang) was so proved by the witnesses PF.17897 Insp. Said (PW1), E5318 Cpl Doni (PW2), Hezron Joseph Shosho (PW5), Noel Isack Kaaya (PW3), the Government Chemist and his Report (Exh. P3) thereof. That, the chain of custody of the Narcotic Drug (Exh. P2) was duly proved by the witnesses PW2 & PW3 accordingly in terms of **Huang Qin & Xu Fujie V The Republic** (CAT) Criminal Appeal No. 173 of 2018 Dar es salaam Registry. That, the Certificate of Seizure (Exh P1) and the Appellant's Cautioned Statement (EXh P4) was a proof that the Appellant did actually commit the offence. The Respondent prayed the court to dismiss the appeal for want of merit.

The Court is of the considered position that the prosecution case against the Appellant before the trial Court was not proved beyond reasonable doubt for want of credibility of the evidence. This because there was contradiction amongst the prosecution witnesses. PF 17897 Inspector Said (PW1) and E 5318 Cpl Doni (PW2) testified that the alleged narcotic drugs were found in the Appellant's house in the trousers jean pocket sealed in the green plastic/nylon bag. But Noel Isack Kaaya (PW3), G 8014 DC Enzimel (PW4) and Hezron Joseph Shosho (PW5) testified that the said narcotic drug were in a Yellow plastic bag. E5318 Cpl Doni (PW2) and G 8014 DC Enzimeli (PW4) testified that the said plastic bag had 90 sticks/pillets of the narcotic drug bhang whilst PF 17897 Insp. Said (PW1) and Hezron

Joseph Shosho (PW4) testified that the said plastic bag had 93 sachets/sticks of the narcotic drug (bhang). The prosecution witnesses (PW1-PW5) variably referred to the narcotic drug bhang as sticks, sachets, pillets and pallets. Since the said words vary in meaning, it follows that the prosecution witnesses were not certain of what they were testifying about.

The prosecution witness G 8014 D/C Enzimel (PW4) testified that the search in the Appellant's house was eye witnessed by Village Executive Officer, one Hezron Joseph Shosho (PW5) but the said witness according to himself and PF 17897 Insp. Said (PW1) was a hamlet chairman.

According to G 8014 D /C Enzimel (PW4), he and one F. 751 D/C Abdulrahman are the one who searched the Appellant upon being so informed by the informer. But according to PF 17897 Insp. Said (PW1), the officer commanding, Chamwino Police Station he is the one who searched the Appellants' house in the company of PW2 and PW4. Hezron Joseph Shosho (PW5) the hamlet chairman, did not state the number of the Police Officers who were present at the scene of crime during the alleged search. So, if (PW1) had authorized PW4 and another to search the Appellant's house, there should have been a written authority to that effect pursuant to section 38 (1) of the Criminal Procedure Act, [Cap 20 RE 2019]. In the absence of the Written authority to that effect the search was illegal and the Certificate of Seizure [Exh. P1] thereof, which is hereby expunged from the record of the trial Court.

Another procedural irregularity is that although the prosecution documentary exhibits, P1,P3 and P4 were admitted in evidence and were allegedly read over to the Appellant, the trial court's record is silent as to who read them to the Appellant. The Court is of the considered position that the prosecution witnesses and any other person who reads the documentary

exhibits upon admission in evidence, his identity should be stated in the record of proceedings accordingly. The omission is fatal hence the expunging of the said documentary exhibits from the record accordingly.

That, said the prosecution case was not proved beyond reasonable doubt as per reasons already stated elsewhere in this judgment. The appeal is hereby allowed accordingly. The conviction and sentence of twenty (20) years imprisonment, respectively, against the Appellant are hereby quashed and set aside. The Appellant shall be released forthwith from prison except if there was a lawful cause to the contrary.



  
GEORGE M. MASAJU

**JUDGE**

27/12/2021