IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

DC CRIMINAL APPEAL NO. 61 OF 2021

(C/F from Criminal Case No. 75 of 2020 In the District Court of Mwanga at Mwanga)

SAID ALLY MNZAVA.....APPELLANT

Versus

THE REPUBLIC.....RESPONDENT

JUDGMENT

Last Order: 13nd Dec, 2021

Date of Judgment: 31ST Feb, 2022

MWENEMPAZI, J.

The appellant Said Ally Mnzava was charged before the District Court of Mwanga at Mwanga with an offence of Unlawful Trafficking of Narcotic drugs contrary to section 15A (1) and (2) (c) of the Drugs Control and Enforcement Act, (Cap 95 R.E. 2019). It was alleged in the particulars of offence that on the 2nd day of May, 2020 at or about 08:50 hrs. at Mnoa Village within Mwanga District in Kilimanjaro region the appellant did traffic 30.659 kilograms of narcotic drugs "khat" commonly known as Mirungi. He pleaded not guilty and the trial commenced. At the end of trial, the trial

court found him guilty as charged and sentenced him to 20 years imprisonment. Aggrieved with both conviction and sentence the appellant lodged an appeal to this Court stating seven grounds as follows:

1. That the learned trial Magistrate grossly erred in both law and fact in convicting the appellant but failed to note that the alleged "Mirungi" were neither produced nor tendered in evidence as exhibits before the trial court. Further neither PW1 nor PW2 who are said to have re-arrested and re-seized the alleged "Mirungi" never identified those purported "Mirungi" before the court. Hence there is no proof whether the alleged "Mirungi" really existed.
2. That the learned trial magistrate grossly misdirected herself and consequently erred in both law and fact in stating that the appellant signed Exh.PE1 (Certificate of seizure) to acknowledge being in possession of Exh. PE2 (PF-16 Exhibit Register) and Exh.P3 collectively (hati ya makabidhiano).
3. That the learned trial magistrate grossly erred in both in law and fact in convicting and sentencing the appellant basing on Exh.P1 (Certificate seizure) which was not signed by the appellant and the prosecution failed to prove whether it was signed or not by the Appellant despite the objection raised by the appellant.
4. That the learned trial magistrate grossly erred in both law and fact in failing to note that there were no receipts issued, produced or tendered in evidence to acknowledge the seizure of the alleged Mirungi pursuant to section 38(3) of the CPA. The tendered and admitted Exh.P1 (certificate of seizure) cannot be equated to a receipt mentioned in the above cited section of law.

5. That the learned trial magistrate grossly erred in both law and fact in convicting and sentencing the appellant but failed to note that there were no explanations from the prosecution side on where and under whose custody the alleged Mirungi were kept from 2.05.2020 when the said Mirungi were re-seized until 03.05.2020 when they were said to have been handed to PW3 (the store keeper). Therefore, it cannot be said with certainty that what were said to have been seized were very ones which were allegedly taken and subsequently examined by the government chemist.
6. That the learned trial magistrate grossly erred in both law and in fact in convicting the appellant basing on weak, tenuous, contradictory, uncorroborated and wholly unreliable prosecution evidence from prosecution witnesses.
7. That the learned trial magistrate grossly erred in both law and in fact in convicting and sentencing the appellant despite the charge being not proved beyond reasonable doubt and to the required standard by the law.

At the hearing of this appeal Mr. Kassim Nassir learned State Attorney appeared for the respondent/Republic while the appellant appeared unrepresented. The appellant had nothing to add but prayed for this court to consider his grounds of appeal and decide. Mr. Kassim Nassir on the other hand prayed for the explanation on the grounds of appeal by the appellant especially the first ground.

The appellant stated that he was not arrested with Khat but he was only summoned at the office of auxiliary police in Kileo village. He said that when he got to the office, he found a police car and there were 7 police

officers and 4 militia police. That one police officer by the name of Anna Tauka told the militia police to take out a luggage and take a picture of the appellant with the bags. The appellant went explaining that he did not know what was in the bags so he refused to hold the bags. From that point the appellant said they were taken to the police station where they were kept for two days before they were taken to court. He added that while in court they requested to be shown the drugs but the drugs were never shown. In the end the appellant insisted that he was not arrested at Killeo village but he was summoned from the village at the farm of Kampala Kivulini Village.

Submitting in reply to the 2nd and 3rd grounds, Mr. Kassim Nassir stated that the argument that the appellant did not sign a certificate of seizure was meritless because at page 8 after the appellant was arrested, he signed on the certificate of seizure. He also argued that the appellant was convicted based on presence of evidence.

With respect to the 4th ground, Mr. Nassir submitted that the search conducted to the appellant was not a normal one since it was done immediately after arrest as provided for under section 41(b) of CPA, Cap. 20 RE 2019.

On the 5th ground Mr. Nasir submitted that according to PW1 at page 8 of proceedings the appellant was arrested with 83 bundles of khat and that as per page 13 of the proceedings, the bundles were handed over on the same day to G. 6772 PC Graciano.

Responding to the 1st ground of appeal, Mr. Nassir admitted that it was true that the exhibits were not tendered in court. He was however of the

view that the case was proved without leaving any doubt since all other exhibits relating to trafficking drugs were tendered. Narrating the story Mr. Nassir submitted that PW1 arrested the appellant with 83 bundles of drugs and PW3 received them and took the exhibit to the Government Chemist. That PW4 took the exhibit to the Chief Government Chemist and also went back to collect the results of the test which was positive. He contended that the important thing was maintenance of the chain of custody which he argued that it was maintained from the time of arrest to the test at the government chemist. It was Mr. Nassir's submission that even if the exhibit was interfered thereafter, it had no effect in proving the case against the appellant. Mr. Nassir was of the opinion that the case was proved to the standard required and that the grounds of appeal have no merit thus the appeal should be dismissed.

In a brief rejoinder the appellant submitted that the person who alleged to have arrested him was Ally Bakari Shabani who did not testify against him. He also submitted that DC Anna Tauka alleged to have arrested him with 84 bundles of drugs while police Graciano alleged that it was 30.10kg of Khat so he questioned whom amongst the two was speaking the truth. In the end the appellant prayed for this court to re-evaluate the evidence and allow the appeal.

Having carefully examined the trial court's record, grounds of appeal and submission from both parties, I will now proceed to determine the appeal. In general, the grounds of appeal are based on one issue which is whether the charge against the appellant was proved on the standard required by law that is beyond reasonable doubt. In answering this issue, I will be examining each ground of appeal as raised by the appellant. Starting with

the 1st ground of appeal where the appellant complained of the alleged mirungi not being produced or tendered in court as evidence hence creating a doubt on its existence. While admitting on the fact that the said Mirungi were not tendered in court as evidence the learned state attorney argued that it did not affect the case since all the other exhibits leading to trafficking in drugs were tendered. The issue here is whether failure by the prosecution to tender in court the said Mirungi as evidence was fatal. The appellant was charged with an offence of trafficking of narcotic drugs, to prove the offence during trial the prosecution brought evidence on how the appellant was apprehended after being found with a white sulphate bag in which there was 83 bundles of mirungi. The evidence also included documents such as certificate of seizure PE1 where the seized drugs were recorded and signed by witnesses immediately after the drugs were seized from the appellant. Also, the prosecution evidence narrated on how the exhibit was handled from the point it was seized until when it was taken to the Government Chemist for examination. It was also in the prosecution evidence that the exhibit was weighed and a sample of the same was taken for examination. After examining the sample, the result was given by the government chemist through a report in which he confirmed that the exhibit was indeed narcotic drugs known as Khat - Mirungi (Catha Edulis). The report was also tendered in court as evidence and admitted as exhibit PE5. Going by this evidence, there is no doubt that the charge against the appellant was proved. Although the drugs were not brought to court but the evidence brought to court was authentic and it established a good chain of custody on how and when the drugs were seized until the time when it was taken to the government chemist. It is therefore my considered opinion that as long as the chain of custody was well

established in this case even if the drugs were not actually brought to court it did not affect the case.

There is a long list of cases, related to chain of custody and its impact in proving a criminal charge against the accused person. I will only refer to one case of **Paulo Maduka and 4 Others vs. Republic**, Criminal Appeal No.110 of 2007 (unreported) the Court of Appeal had the following to say with regards to chain of custody;

> *"By chain of custody, we have in mind the chronological documentation and /or paper trail, showing the seizure, custody, control, transfer, analysis, and disposition of evidence, be it physical or electronic. The idea behind recording the chain of custody, is to establish that the alleged evidence is in fact related to the alleged crime-rather than, for instance, having been planted fraudulently to make someone appear guilty... The chain of custody requires that from the moment the evidence is collected, its every transfer from one person to another must be documented and that it be provable that nobody else could have accessed it."*

In this case I find the allegation by the appellant that there was no proof that the said 'mirungi' really existed to be of no basis since the chain of custody was well established which proves the existence of the drugs in question. This ground is therefore lacking in merit.

Moving on to the 2nd and 3rd grounds of appeal the appellant challenged the admission into evidence of exhibit PE1 which was the certificate of seizure. Based on the records, the appellant did object to the tendering of

the certificate of seizure by contending that he did not sign it however the trial court found the objection to be baseless so the same was admitted. It was also clear to me that the appellant was objecting with no valid reason because even after the exhibit was admitted the appellant did not cross-examine the witness regarding his signature on the exhibit, he simply objected by denying to have signed it. In that regard I find these grounds to be meritless.

With respect to the 4th ground, the appellant complained that the prosecution did not issue a receipt acknowledging the seizure as required by the law under section 38(3) of the Criminal Procedure Act. This ground was well addressed by the learned state attorney when submitting in response to the grounds of appeal. He explained that the search was conducted under section 41(b) and not under section 38 of the act as the appellant suggested. Under section 41(b) of the CPA there is no requirement of a receipt acknowledging seizure. This ground is also lacking in merit.

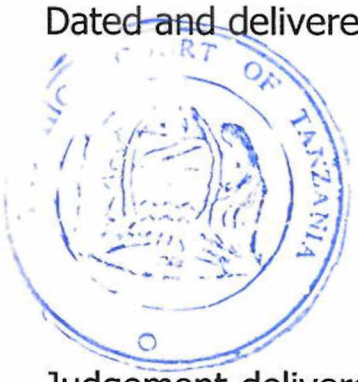
Based on what I have already discussed on the 1st ground the 5th ground also does not stand because there was no break in the chain of custody as suggested by the appellant. The chain of custody was well established.

On the 6th ground the appellant has alleged that the trial magistrate erred by convicting him basing on weak, contradictory, uncorroborated and unreliable prosecution evidence. This ground is also baseless as the appellant did not point to anything in particular in prosecution evidence that depicted what he said.

Finally on the 7th ground, based on what I have already discussed above, it is no doubt that the prosecution did prove the charge against the appellant beyond reasonable doubt.

In light of the above, I thus equally join hands with Mr. Nassir learned State Attorney that this appeal is of no merit. The appeal is hereby dismissed and the decision of the trial court is upheld. It is so ordered.

Dated and delivered at Moshi this 21st day of February, 2022.



T. MWENEMPAZI

JUDGE

Judgement delivered this 21st day of February, 2022 in the presence of the appellant and absence of the Respondent. Right of Appeal explained to the appellant.

T. MWENEMPAZI

JUDGE