

**IN THE HIGH COURT THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

CRIMINAL APPEAL NO. 43 OF 2021

(Originating from Criminal Case No. 52 of 2020 of the Kishapu District Court)

DONALD JIDAYIAPPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

9th & 13th May 2022

MKWIZU J:

At the district Court of Kishapu , appellant was tried for and convicted of unlawful trafficking of narcotic drugs contrary to section 15A(1) of the Drugs Control And Enforcement Act, No 5 of 2015 as amended by Act No. 15 of 2017 . It was alleged that on 22/2/2020 at about 17 30 hrs at Mhunze town within Kishapu District in Shinyanga Region, appellant was found unlawfully trafficking 4.5 kilograms of narcotic drugs to wit cannabis resin commonly known as "Bhangi". At the end of the trial, appellant was found guilty and after conviction, was sentenced to a custodial sentence of 30 years.

Aggrieved, appellant appealed to this court with eight (8) grounds of appeal summing up to one complaint that the prosecution case was not proved beyond reasonable doubts.

At the hearing of this appeal, the appellant was present in person unrepresented, and the Respondent/Republic had the service of Mr.

Nestory Mwenda learned State Attorney. Appellant had nothing to say, she left the matter to the court for decision.

When invited to respond to the grounds of appeal, the learned State Attorney readily conceded to the appeal on the ground that all the documentary evidence namely bus ticket (exhibit P1); accused cautioned statements (exhibitP2); A letter showing the weight of the drugs (exhibit P3);A letter to the Government Chemist offices (exhibit P4) and Government Chemistry Report (exhibit P5) tendered by the prosecution were admitted and their contents were read out before the court contrary to the laid down procedures. Citing the case of **Issa Hassan Uki V R**, Criminal Appeal No 129 of 2019 CAT (Unreported) the learned State Attorney argued that, that omission is fatal and he implored the court to expunge them from the records.

It was further submitted that, the PW2, the eye witness to the search conducted to the appellant could not before the court identify the said bhangi as the same he personally witnessed its seizure from the appellant and did not as well identify the certificate of seizure to say whether it is the one he witnessed its search or not. The learned State Attorney was keen enough to admit that, though the prosecutions witnesses were not cross examined by the appellant, their evidence after exclusion of the documentary evidence including the Government Chemist report, could not by any standard establish the prosecution case. He on that ground supported the appeal.

I have intensely gone through the records, grounds of appeal and the parties' submissions. Admittedly, Exhibits P1, Appellant's bus ticket,

Appellant's cautioned statement (exhibit P2); *Taarifa ya Uzito wa Majani ya mimea idhaniwayo kuwa ni Mirungi* (exhibit P3); a letter addressed to the Government Chemist office (exhibit P4); Government Chemist report (exhibit P5) were admitted in evidence and the proceedings do not show if they were read out in court after admission. This omission is, as held by the Court of Appeal in number of cases including the decision of **Issa Hassan Uki V R** (Supra), cited by the learned State Attorney fatal irregularity as it deprives the parties their right to know the nature and substance of the exhibit in question. Having concluded that the listed exhibits were not read out as required, I have no option but to expunge them from the records.

This is a case on unlawful trafficking of narcotic drugs, to ground conviction, prosecution ought to have established that appellant was found with substances which were ultimately confirmed to be Bhangi. The Substances allegedly found with the appellant were tendered in evidence as Exhibit P6 at page PE 6 and PE7 and the seizure certificate was as well tendered by PW4 at page 27 of the records as it survived the exclusion from the evidence on the records as its contents were read in court after its admission. However, This evidence is weak because, apart from the fact that the presence of such substance could not by itself prove that they were narcotic drugs without the expunged Government Chemist report, the eyewitnesses, PW2 of the said search did not identify both the substances alleged to be found with the appellant and the certificate of seizure. The cumulative effect of the above renders the prosecution evidence scrawny to ground appellant's conviction.

Consequently, I allow the appeal, quash conviction, and set aside the sentence meted against the appellant. Appellant is to be release from custody forthwith unless otherwise lawful held.

Order accordingly.

DATED at Shinyanga this 13th day of May, 2022.


E.Y. MKWIZU

JUDGE

13/05/2022

COURT: Right of appeal explained. 

E.Y. MKWIZU

JUDGE

13/05/2022