

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

**AT BUKOBA**

**CRIMINAL APPEAL NO. 21 OF 2020**

*(Arising from Muleba District Court in Criminal Case No. 21 of 2022)*

**PATRICK ELIAS @ BYAMUNGU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

*Date of Judgment: 09.09.2022*

*A.Y. Mwenda, J.*

Before the District Court of Muleba at Muleba, the appellant was arraigned for two counts under the Drugs control and enforcement Act, [Cap 95 RE 2019]. The first count is unlawful cultivation of prohibited plants contrary to section 11(1) (a) where it was alleged that he was found cultivating narcotic drugs to wit 293 trees of cannabis sativa. The second count is unlawful possession of Narcotic drugs contrary to section 17(1) (a) where it was alleged that he was found in possession of 8 killograms of Narcotic drugs to wit cannabis sativa. Both offences are alleged to be committed on 26<sup>th</sup> day of January, 2022 at Muleba village within Muleba District in Kagera Region.

When the charge was read over to the appellant, he pleaded guilty to both counts. Consequently he was convicted and sentenced to serve a term of thirty (30) years jail imprisonment for the 1<sup>st</sup> count and five years jail imprisonment for the 2<sup>nd</sup> count. Both sentences were ordered to run concurrently.

Aggrieved by the conviction he preferred the present appeal with six grounds which for the sake of this appeal I decided not to reproduce them.

When this appeal was set for hearing, the appellant appeared in person without legal representation whilst the respondent republic was represented by Mr. Amani Kyando, learned State Attorney.

Upon being invited by the court to submit in support of his grounds of appeal the appellant had nothing of essence to submit, rather he prayed the court to adopt and consider his grounds in making its findings.

When invited to respond to the appellant's grounds of appeal Mr. Amani begun by informing the court that he opposes the appeal. He submitted that the appellant pleaded guilty to the charge and when the facts of the case were read, he also admitted them as true and correct. The learned counsel further submitted that since the appellant pleaded guilty to the charge and later admitted the facts as being true, then his plea was unequivocal.

When probed by the court with regard to the effect of reading charge without indicating that is was in the accused's language and the absence of the court's interpreter, the learned counsel submitted that the records are silent in that regard

in that there is nowhere it is indicated that the charge was read in the language which the appellant understood. He said, that being the case, then the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal are meritorious. The learned counsel concluded by submitting that since the charge sheet was not read in the language understood by the appellant then the whole proceedings is a nullity. He then prayed the court to nullify the lower court's proceedings and order trial de novo.

Having considered the submissions by the parties it is now the duty of this court to determine the present appeal. As it was submitted by Mr. Amani, the appellants conviction solely relied on his own plea of guilty to both counts in the charge sheet. Looking on the grounds of appeal advanced by the appellant, it is clear that he challenges his conviction. It is important to note that no appeal is allowed on plea of guilty. In the case of JUMA S/O SELEMANI @ PAUL V. THE REPUBLIC, CRIMINAL APPEAL NO. 394 OF 2016, CAT (unreported) it was held inter alia that;

*"No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence."*

Despite the legal restrictions above, there are exceptional circumstances under which an accused person may be allowed to appeal against a conviction on his own plea of guilty. In the case of MARCO LUSHONA SUKUMA V. REPUBLIC, [2014] TLR 404, CAT, it was held inter alia that;

*"(i) Under certain circumstances, an appeal may be entertained notwithstanding a plea of guilty. A plea of guilty having been recorded, this court can only entertain an appeal against conviction if it appears;*

*(1) That the appellant did not appreciate the nature of the charge or did not intend to admit he was guilty of it or*

*(2) that upon the admitted facts he could not in law have been convicted of the offence charged."*

*(ii). N/A*

In the present appeal, the appellant (especially in the 2<sup>nd</sup> and 3<sup>rd</sup> ground) is faulting the trial court's failure to afford him the services of an interpreter since he is not fluent in English and Kiswahili. Impliedly the appellant is alleging his plea as being equivocal. That being the case therefore, the issue before this court is whether the appellant's plea of guilty was unequivocal.

As I have stated earlier, the appellant's conviction hinged on his own plea of guilty. On that stance, it is also important to see if the appellant's plea of guilty is in alignment with the principle governing unequivocal plea of guilty. In the case of ALFRED BOMAN V. REPUBLIC, [2013] TLR 27, the court held inter alia that;

*"(iv) It is important that when a case is called on for preliminary hearing, a charge must be read over in the language he understands. If the court finds that the*

*accused plea is unequivocal, the prosecution should proceed to narrate the facts of the case forming all the ingredients of the offence with which the accused person is charged. Thereafter, the accused should be required to admit or deny every such ingredient.” [emphasis added]*

In this appeal, the appellant is alleging he is not fluent in either English or Kiswahili. He also alleges the court denied him the services of an interpreter. In a bid to satisfy itself as to whether the appellants ground have substance, this court went through the records and found out that the proceedings are written in English. The said records are silent as to whether the court invited an interpreter to assist in interpreting the proceedings from English to Kiswahili.

On top of that, when the charge was read, the record are silent as to whether the same were read in the **language the appellant understands**. With these anomaly this court finds merits in the appellant's 2<sup>nd</sup> and 3<sup>rd</sup> ground of appeal and for that matter, his plea was equivocal.

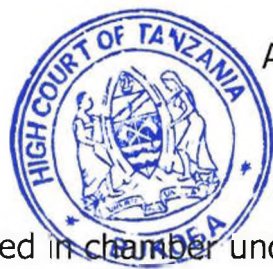
Regarding consequences, Mr. Aman prayed this court to order the trial de novo to enable the republic go and read the charge in accordance to the law. I have considered this prayer but having gone through the records, I have noted that there is no likelihood of this case to take off fairly. This is so because, the purported 8kg of cannabis sativa were destroyed. Also, the purported cautioned statement

and certificate of seizure which were tendered are not on the records and strangely they were not even given exhibit numbers.

For the sake of justice I am of the view that ordering a trial de novo might lead to miscarriage of justice against the appellant.

That being said, I find merits in this appeal and it is hereby allowed and the conviction and sentence meted by the trial court are set aside. It is ordered that the appellant should be released from prison immediately unless otherwise lawfully held.

It is so ordered.



  
A.Y. Mwenda

**Judge**

09.09.2022

Judgment delivered in chamber under the seal of this court in the presence of the Appellant and in the presence of Mr. Kamisius Bada Ndunguru, State Attorney for the Respondent.



  
A.Y. Mwenda

**Judge**

09.09.2022