

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

CRIMINAL APPEAL NO. 41 OF 2022

*(Originating from Criminal Case No. 23/2022 In the District Court of Mtwara at
Mtwara)*

HAMISI DADI MKWAMISI.....APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

Muruke, J.

Hamisi Dadi Mkwamisi, (the appellant) on 3rd day of February 2022 at Mdui area, within Mtwara and Region of Mtwara, found in unlawful possession of Narcotic drugs to wit, 4.84 Kilograms of Bhangi. He was tried and finally convicted, on his own plea of guilty to the charge, thus, sentenced to 30 years' imprisonment. Despite his own plea of guilt, he has filed appeal, challenging, conviction and sentence raising four grounds of appeal, articulated in the petition of appeal. On the date set for hearing, appellant was in person, argued his own appeal, while respondent was represented by Kauli G. Makasi, learned State Attorney.

In brief, appellant submitted on ground one that, he pleaded guilty without himself knowing that he was doing the wrong thing. He was told to admit everything in court, so, he pleaded guilty wrongly. **On ground two**, he complained that, he was not explained in details of the offence

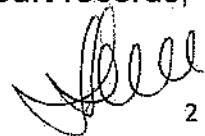
 1

that he was charged. He just took lightly and admitted the offence as a result, he was sentence to serve thirty years' imprisonment. Appellant complaint on **ground three**, is on trial Magistrate failure to take in to account his mitigation factors before sentencing. **On fourth ground**, appellant complained that, exhibit was not read in court, same is fatal to the proceedings. In totality appellant requested this court to allow appeal, quash conviction and aside sentence.

On the other hand, learned State Attorney supported conviction and sentence meted by trial court. Respondent counsel joined ground one and two of appeal and submitted that, plea was unequivocal one. Appellant pleaded guilt of the offence of drug trafficking. Looking at trial court proceedings at page one, charge sheet was read and explained. Appellant pleaded guilt by saying it is true that he was arrested with Narcotic drugs Bhangi. Appellant admitted all the facts as read out by prosecution. Exhibits were admitted among others certificate of seizure that showed Drugs Bhangi was seizure from Appellant. Appellant did not object to all the exhibits that were tendered. There is no any lacuna, to show that procedure was not followed.

On ground three, complaint is failure to take on board mitigation factors. The offence under minimum sentence Act. So, whatever kind of mitigation, there was no any other sentence. Complaint on ground four is on, exhibits that were not read in court, after being tendered. That's not true. Proceedings reflect that exhibit was read without any doubts. In totality respondent counsel, requested court to dismiss appeal for lack of merits.

Having heard both parties submissions, gone through trial court records,



2

it is worth reproducing section 228 (1) and (2) of the CPA, which governs plea taking. It provides that: -

“(1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.

(2) Where the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses, and the magistrate shall convict him and pass sentence upon or make an order against him unless there appears to be sufficient cause to the contrary”

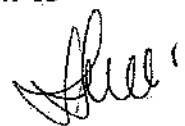
It is settled law that for a plea of guilty to be unequivocal, plea it must satisfy the requirements set out in the above section. As found by the trial court, the conditions for an unequivocal plea of guilty were met hence no appeal against the conviction could lie to the court. The appellant can only challenge his guilty plea under certain circumstances as elaborated in the decision of the High Court in *Lawrence Mpinga V.R [1983] T. L. R 166* in which Court of Appeal held that

“An accused person who has been convicted by any court of an offence on his own plea of guilty, may appeal against the conviction to a higher court on any of the following grounds:

(1). That, even taking into consideration the admitted facts, his plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty.

(2) That, he pleaded guilty as a result of mistake or misapprehension.

(3) That, the charge laid at his door disclosed no offence known to law and



(4) That upon the admitted facts, he could not in law have been convicted of the offence charged."

Having exposed the position of the law, below is what transpired at the trial court.

Date: 03/03/2022

Coram: Hon. L. M. Jang'andu – RM

Pros: Mr. I. James – PP

Accused: Present

B/C: H. Munthali - RMA

Court: Charge read over and explained to the accused person who is asked to plead thereto.

PLEA TAKING

Accused: Ni kweli nilikamatwa nikiwa na kiasi cha 4.84 kg cha bhangi.

Accused: Signed

Court: Entered Plea of Guilty

Sgd: L. M. Jang'andu

RM

03/03/2022

PP: We are ready facts

Sgd: L. M. Jang'andu

RM

03/03/2022



FACTS BY PP

Accused person is Hamisi Dadi Mkwamisi, 35 years, Makonde, Muslim, Peasant, Resident of Nanyamba. On 03.02.2022 the accused person was at Mdui area within the District and Mtwara Region. While at the said area, the accused was arrested by the police officer while in possession of Narcotic drugs to with 4.84 kilogram commonly known as Bhang. Thereafter certificate of seizure was prepared and filed after seizure of the said Drugs. Thereafter receipt was issued to him. Thereafter the accused, police officer who arrested him and independent witness signed on that certificate of seizure. Thereafter accused person together with his exhibits was taken to the police station for further legal steps. After brought at police station, the accused was interrogated by D/CPL. Keya and the accused person was confessed to have been arrested in possession with that bhang. Today accused person is before the court and after the charge read over and explained to him he pleaded guilty as he has done.

Sgd: L. M. Jang'andu

RM

03/03/2022

Accused: Your honour, all facts are true and correct.

Accused: Signed

PP: Your honour, as the accused person has pleaded on charge and admitted all facts we pray for your court to receive bhang 4.84 kg, report from the office of Government Chemist, caution statement of the accused, certificate of seizure together with its receipt and be exhibit in this case.

Sgd: L. M. Jang'andu

RM

03/03/2022



Accused: No objection on those exhibits your honour as I was arrested while possessing that bhang.

Sgd: L. M. Jang'andu

RM

03/03/2022

Court: Bhang 4.84 kg is admitted and marked Exhibit P1, Examination Report is admitted and marked exhibit P2, Certificate of seizure and its receipt collectively admitted and marked Exhibit. P3 and Caution Statement is admitted and marked Exhibit P4.

PP: Your honour we pray for your court to allow me to read loudly contents of caution statement, certificate of seizure and its receipt, and examination report from Government Chemist Office, before this court.

Sgd: L. M. Jang'andu

RM

03/03/2022

From the above reproduced copy of proceedings, it is clear that charge sheet was read clearly in which accused now appellant pleaded guilty, when he said "***Ni kweli nilikamatwa niliwa na kiasi cha 4.84 kg cha bhangi***". Meaning that, he was arrested with 4.84 Kilogram of Bhangi. Appellant also agreed with all the facts as read out by prosecution, as reproduced above when he said your honour, all facts are true and correct. It cannot be said that, he did not understand, thus ground 1 and 2 of appeal lacks merits, thus dismissed.



Appellant complaint on ground three that, trial court did not consider his mitigations, is without merits. At page "5" of typed proceedings, before sentencing, trial court considered mitigation as follows: -

considering the mitigation of the accused person, and the offence charged which falls under minimum sentence of 30 years in jail, this court is sentencing the accused person to go and serve a term of thirty years imprisonment. See section 15 A (a) of the Drugs Control and Enforcement Act [Cap as R.E 2021) as amended by Section 18 of the Written Laws (Miscellaneous Amendments Act No. 5 of 2021).

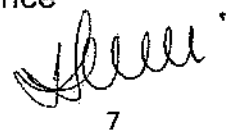
From the above reproduced sentence by trial court, the offence fails under minimum sentence of 30 years' imprisonment. Thus trial court could not have issued sentenced below the one provided by section 15A (a) of Drugs Control and Enforcement Act (Cap 95 R.E 2019, as amended by section 18 of written Miscellations Amendments Act No. 5 of 2021.

Issue of trial court not readings exhibit after being admitted, as raised by appellant on ground four lacks merits. According to the trial court records, at page 4 of typed proceeds, reads that.

PP: Your honour we pray for your court to allow me to read loudly contents of caution statement, certificate of seizure and its receipt, and examination report from Government Chemist Office, before this court.

Court: Prayer granted PP is allowed to read loudly contents of the prayed exhibits after admitted by this court.

The answer is clear that all exhibit was read in court after being received. Assuming they were not, which is not the case here, yet, producing exhibits once an accused has pleaded guilt to the offence and agreed with all the facts not mandatory.



7

In totality, a plea of guilt by the appellant then accused was unequivocal. Appellant understood the charge sheet that was read to him, he admitted all the facts as read out by prosecution. There is no ambiguity or misapprehension of facts. As Appellant was convicted on his own plea of guilt, no appeal that could lie against his conviction. Appeal lacks merits, thus dismissed.




Z. G. Muruke

Judge

31/10/2022

Judgment delivered in the presence of Enosh Kigoryo Learned State Attorney for respondent and the appellant in person.




Z. G. Muruke

Judge

31/10/2022