

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**DC CRIMINAL APPEAL NO. 14 OF 2022**

*(Originating from Mlele District Court in Criminal Case No.7 of 2022)*

**JUSTINE S/O ALISEN @ KIPETA ..... APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**22/11/2022 & 30/11/2022**

**JUDGMENT**

**MWENEMPAZI, J:**

The appellant is aggrieved with both conviction and sentence prescribed by the trial Court (Hon. B.M. Ahmed, RM) on the 19<sup>th</sup> January, 2022. He has therefore appealed raising two grounds of appeal as follows:

1. That the trial Court erred at (sic) law and fact by entering plea of guilty despite of the plea being equivocal as it was not disclosed and explained.
2. That the trial Court erred at (sic) law by convict and sentencing the appellant on the case which was not proved beyond reasonable doubt as required by law.



In the trial Court the appellant was charged with the offence of unlawful possession of Prohibited Plants contrary to Section 11(1) (d) of Drugs Control and Enforcement Act, Cap 95 RE. 2019 it was alleged that the appellant herein **JUSTINE S/O ALISEN @ KIPETA** at Mkuyuni Village within Mlele District in Katavi Region, was found in possession of 400grams of Prohibited Plants namely *cannabis sativa* commonly known as "bangi" without permit thereof.

According to the record, when the charge was read over to the accused (appellant herein) he pleaded guilty to the charge. Facts constituting the offence were read over and explained to the accused. In the process, 400 grams of alleged "bhang" were admitted and seizure certificate (Form No. DCEA 003) was received as exhibit P2. Both exhibits were received person. At the end the accused informed the Court the facts are true and correct. Hence the Court convicted the accused of the offence charged based on his admission to the charge and the facts constituting the offence that they are true and correct. The sentence prescribed is the minimum sentence set under section 11(1) (d) of the Drugs Control and Enforcement Act, Cap 95 R.E 2019. He was thus sentenced to serve term of thirty (30) years in jail.



At the hearing of the appeal the appellant was unrepresented and the respondent, Republic was being served by Mr. John Kabengula, the Learned State Attorney. The appellant prayed to waive his right of submitting first and opted to respond after the learned state attorney has submitted.

The State Attorney in his submission, he stated that ideally, the law does not allow appeal against conviction, where it is based on own plea of guilty. That is according to section 360(1) of the Criminal Procedure Act, Cap R.E 2022 which provided that:

*"No appeal shall be allowed in 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 of legality of the sentence".*

The Counsel also cited the case of **Laurent Mpinga Vs. The Republic [1983] TLR 166** where the Court held that:

*"An appeal against conviction based on an unequivocal plea of guilty generally cannot be sustained, although an appeal against sentence may stand".*

A handwritten signature in black ink, appearing to be 'J. Kabengula', is located at the bottom right of the page.

The counsel for the Respondent submitted that in their view, the plea was unequivocal and prayed the first ground of appeal to be dismissed for lack of merit.

On the second ground of appeal that the offence was not proved beyond reasonable doubt, the Counsel submitted that they support the contention. He submitted that although the appellant (accused in the trial court) admitted to the charge and facts which were read over and explained to him, still the prosecution had the duty to prove the offence beyond any reasonable doubt. The Counsel cited the case of **Omary Joachim Vs, republic**, Criminal Appeal No. 536 of 2016, Court of Appeal of Tanzania at Arusha, the Court held that it was incumbent on the prosecution to prove the offence of transportation of prohibited plants contrary to section 11(1) (d) of the Drugs Control and Enforcement Act, No. 5/2015.

In another case, **Aldo Kilasi Vs. The Republic**, Criminal Appeal No. 466 of 2019, Court of Appeal of Tanzania at Iringa, the Court underscored the need for narcotic drugs to be chemically analysed and proved by making the following observations.

*"The prosecution in the offences related to narcotic drugs has a duty to submit expert analysis which is mandatory as its result is*

*final, conclusive and it provides check and balances that warrant convicting”.*

Failure to tender the analysis report renders the conviction unfounded. The Counsel submitted that in this case the prosecution did not fulfil their duty properly hence the case was not proved beyond reasonable doubt. He concluded that the respondent is supporting the appeal.

I have also read the record I agree the appellant was convicted based on his own plea of guilty and that was stated clearly by the trial magistrate in his findings at page 4 of the proceedings. The words are:

*"taking into consideration, that the accused pleaded guilty to the charge, also accused admitted to the truth of facts as narrated by the prosecution side, subject to Section 11(1)(d) of the Drug Control and Enforcement Act, Cap 95 RE 2019, accused Justine s/o Aliseni @ Kipeta is hereby convicted on the offence of unlawful possession of prohibited plants, as charged*

***Signed***

***B.M. Ahmed***

***19/01/2022”***

As narrated earlier the prosecution tendered only a certificate of Seizure exhibit P2 and bhang weighing of 400gms exhibit P1. Those were

part of the facts to which the accused (appellant herein) admitted. The question is whether the offence of unlawful possession of prohibited plants Contrary to Section 11 (1)(d) of the Drugs control and Enforcement Act Cap. 95 RE. 2019 was proved to the required standard. In the case of **Omary Joachim Vs. Republic**, Criminal Appeal No. 536 of 2016, Court of Appeal of Tanzania at Arusha the court of Appeal had a similar situation and the question was whether the impugned substance found in the possession of the appellant were actually prohibited plants. The court observed that the substance found in possession of the accused/appellant ought to have been proved by producing the report of government analyst. That was the duty of the prosecution. The court had observed as follows.

*"It was incumbent upon the prosecution to seek and adduce into evidence a report of a government analyst with respect to the nature of the plants which were seized. As that was not done, the true nature of the Seized plants which were the subject of the trial is a matter of conjecture. To say the least, the case for the prosecution fell short, much as, upon the admitted facts the offence of transporting prohibited plants was not established".*



It will therefore be safe also in our case to hold that since there was no such Government analyst report, then the offence was not proved to the required standard.

Under the circumstances, the appeal has merit and is allowed. The order and findings of the trial court convicting the appellant are quashed, sentence set aside and it is thus ordered that the appellant be released forthwith unless or otherwise he is being lawfully held.

It is ordered accordingly.

Dated at Sumbawanga this 30<sup>th</sup> November, 2022.



  
**T.M. MWENEMPAZI**

**JUDGE**

**30/11/2022**