

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

**CRIMINAL APPEAL NO. 40 OF 2022
(Originating from Criminal Case No. 200, in the District Court of
Kilombero, at Ifakara)**

**JOSEPH JOHN MGOBOLENI APPELLANT
VERSUS
THE REPUBLIC..... RESPONDENT**

JUDGMENT

30th November, 2022

CHABA, J.

The appellant, **Joseph John Mgoboleni** was arraigned before the District Court of Kilombero, at Ifakara facing the offence of Trafficking in Narcotic Drugs contrary to section 15A (1) and 2 (c) of the Drugs and Control and Enforcement Act [Cap. 95 R. E, 2019]. It was alleged by the prosecution that on the 22nd day of August, 2020 at Upogoroni street, Ifaraka Township within Kilombero District in Morogoro Region, the appellant was found trafficking narcotic drugs to wit, 27.73 Kilograms of Cannabis Sativa, commonly known as Bhangi within Kilombero District in Morogoro Region.

After a full trial, the appellant was convicted and sentenced to serve




fifteen (15) years imprisonment. Dissatisfied with the trial court decision, the appellant filed four (4) grounds of appeal. For reasons which I will unveil later, I see no need to reproduce these grounds of appeal.

At the hearing, Mr. Emmanuel Kahigi learned State Attorney entered appearance for the Respondent / Republic whereas the appellant, Mr. Tumaini Mgonja learned advocate appeared for the appellant.

Mr. Tumaini Mgonja commenced by adopting the grounds of appeal to form part of his submission. He also preferred to argue the first and the second grounds separately, while the third and fourth grounds preferred to argue them jointly.

As regards to the 1st ground of appeal, Mr. Tumaini Mgonja argued that, the chain of custody was broken as shown at page 9 para 3 of the typed judgment. He added that, the records do not clearly indicate how, where and to whom the exhibits were kept. Further, there is no evidence tendered to prove that, as there was no occurrence book, no exhibits register, and the custodian was not summoned to appear before the trial court as a key witness to elaborate the needful. He underlined that that, even the purported investigator was not summoned and that there is no evidence to prove how the tendered exhibits were stored and the same transferred to Morogoro Central Police.



Submitting on the 2nd ground, Mr. Mgonja argued that the accused person was sentenced on the offence which he was not charged with. He contended that, the court was not led by the evidence but by emotions, as she stood as the prosecutor instead being the magistrate.

On the 3rd and 4th grounds, the learned counsel contented that the prosecution witness was duty bound to prove the charge, but from Exhibits PE.2 and PE.3, it is shown that the appellant was arrested at Posta Ifakara while the charge sheet shows the appellant was arrested at Upogoroni Street.

He went on arguing that even the Exhibit PE.3 (the certificate of seizure) shows that the bag had 276 pulls and the second bag had 315 pulls. However, the evidence adduced by the independent witness (PW4) at page 25 of the typed trial court proceedings demonstrates that the said pulls were not counted.

He further averred that, Exhibit PE.3 shows that, the total number of the seized pulls were 591, but the government analyst at page 6 of the typed trial court proceedings shows that he received 582 pulls meaning that 9 pulls are nowhere to be seen and it is unknown where the same went missing.

Based on the above submissions, the learned counsel concluded that,

the case was not proved in the standard required by the law. Lastly, he prayed for the court to allow the appeal, quash the conviction and set aside the sentence meted against the appellant and release him from prison custody.

On his party, Mr. Emmanuel Kahigi, learned State Attorney joined hands with the defence counsel. In supporting the appeal, Mr. Kahigi submitted that, as the appellant was charged with the offence of trafficking in narcotic drugs, the issue of chain of custody was paramount importance to be determined. Failure of which, it was hard to prove the case against the appellant. He accentuated that, in this case, the chain of custody was broken. He highlighted that, since the chain of custody was not legally maintained in accordance with the relevant procedural law, in the circumstance it was so easy for the Exhibit to be tempered with. He submitted that, any doubt found in the chain of custody its benefits must fall in the domain of the appellant's case.

He ended by stating that, since the present appeal is meritorious, he prayed the court to decide to that effect.

In rejoinder, Mr. Mgonja reiterated his submission in chief and prayed the appellant's appeal be allowed.

After painstakingly going through the trial court proceedings,

judgment, grounds of appeal and the respective oral submissions advanced by the parties, at first, I would like to state that from the parties' submissions, truly I am in agreement with both parties that, the offence levelled against the appellant was not proved beyond a reasonable doubt. This means that, the preponderance of evidence, clear and convincing evidence and reasonable doubt were not established as far as the principle of chain of custody is concerned. It should be noted that, the principle of chain of custody entails the court's careful handling of what is seized from the accused up to the time when evidence is tendered in court. In the famous case of **Paul Maduka and 4 Others vs. Republic**, Criminal Appeal No. 110 of 2007, the Court of Appeal of Tanzania defined the word chain of custody as follows: -

"1) By a chain of custody, we have in mind the chronological documentation and/or proper trail, showing the seizure, custody, control, transfer, analysis, and disposition of evidence, be it physical or electronic.

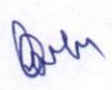
2) The chain of custody requires that from the moment the evidence is collected, its every transfer from one person to another must be documented and that it be provable that nobody else could have accessed it...."

In the appeal, during the trial, the prosecution did not establish how,



where and to whom the alleged two bags of bhang were kept. It was not clear, how the exhibits were handled from when they were seized, taken to police, received by a police officer incharge of the exhibits, whether or not the same were recorded in the exhibit register. Further it was not established how the same were taken to the government chemist for analysis and returned, as well as its storage. I am of a considered view that, in the present matter, there was mishandling of exhibits as it was underscored by the Court of Appeal in the case of **Director of Public Prosecutions vs. Shirazi Mohamed Sharif**, Criminal Appeal No. 184 of 2005, where the Court stated that:

"On the question of mishandling the exhibit... the handling of the exhibit still it is the view of the court that it is the question of believing that PW4 and PW5 that what they found from the accused is what they gave to PW6, I cannot rule out completely the possibility of mixing up the exhibits, but in the absence of a clear evidence the court cannot merely rely on that omission to record, as also it is the view of this court that this is a minor irregularity of which in the absence of clear evidence, the court cannot rely on it that therefore they have been tampering with the exhibit by the police witnesses."




From the above excerpt of the decision of the Court of Appeal, and upon gauging the evidence before hand, it is clear that the chain of custody was improperly handled to the extent of breaking its chain. Looking at the trial court record, the same is completely silent on what happened to the exhibits after they were seized. The same neither was established through documentations, nor parading of witnesses was conducted. In my considered view, lack of documentation usually creates a probability that someone else could have accessed the exhibit.

The idea behind recording the chain of custody is to establish that the alleged evidence, is in fact related and connected to the alleged crime. For instance, in **Illumina Mkoka vs. Republic**, [2003] TLR, 245 (Unreported) the Court held that: -

"... the point that proper recording of the chain of custody of exhibits helps to establish that the alleged evidence (exhibits) is in fact related to the alleged crime."

Apart from what has been rightly observed from the above authorities, I am alive to the fact that, in most of the drug's cases, it is important to maintain the chain of custody of the seized drugs, because non-maintenance has consequences on the credibility of the evidence and the exhibits itself.



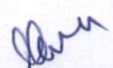
In another case of **Abuhi Omary Abdallah & 3 Others vs. Republic**, Criminal Appeal No. 28 of 2010 - CAT Dar Es Salaam, it was held inter-alia that:

"Where there is any doubt, the settled law is to the effect that in such a situation an accused person is entitled as a matter of right to the benefit of doubt or doubts".

In light of the doubts created by the broken chain of custody as discussed above, the matter shall be resolved in favour of the appellant. As I stated earlier on, I thought it prudent not to lined up all four grounds of appeal for obvious reasons.

In the circumstance, I hold that since the case against the appellant was not proved in the standards required by the law, i.e., beyond a reasonable doubt, squarely it is hard for this court to sustain the appellant's conviction and sentence meted against him.

In the final event, the present appeal is therefore meritorious and accordingly, it is hereby allowed. It follows therefore that, the conviction and sentence meted out against the appellant are quashed and set aside, respectively. The appellant is to be released from custody with immediate effect unless held for other lawful reasons.



It is so ordered.

DATED at MOROGORO this 30th day of November, 2022.



M. J. CHABA

JUDGE

30/11/2022

Court:

Delivered at my hand and Seal of the Court in Chamber's this 30th day of November, 2022 in the presence of Ms. Veronica Chacha, learned State Attorney and the appellant who appeared in person, unrepresented.



M. J. CHABA

JUDGE

30/11/2022

Right of Appeal to the parties fully explained.



M. J. CHABA

JUDGE

30/11/2022