

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

**CONSOLIDATED CRIMINAL APPLICATIONS FOR REVISION NO. 3, 4 AND 5
OF 2022**

*(Originating from Criminal Case No. 32 of 2022 RM's Court of Manyara, Criminal Case No.
139 of 2022 and 116 both in the Babati District Court)*

REPUBLIC.....APPLICANT

VERSUS

JONAS KIZITO.....1ST RESPONDENT

MAIMUNA JUMA RASHID.....2ND RESPONDENT

AWAZI ISSA KIDUKA.....3RD RESPONDENT

RULING

14/12/2022 & 21/12/2022

GWAE, J

The respondents namely; Jonas Kizito, Maimuna Juma Rashid and Awazi Issa Kiduka were charged with and convicted of the offence of trafficking in narcotic drugs c/s 15A (1) and (2) (c) of the Drugs and Enforcement Act, (Cap 95, Revised Edition, 2019 (DCEA) as amended by section 19 (a) of the Written Laws (Miscellaneous Amendments) No. 5 of 2021. The said respondents though were charged with the same offence but each respondent in a distinct case.

It was alleged by the prosecution that, the said Jonas Kizito (1st respondent) on the 17th day of April 2021 at Maisaka area within Babati District did traffic in narcotic drug namely; heroin weighing 2.57 grams. And that, the said Maimuna Juma and Awazi Issa Kiduka (2nd and 3rd respondent) on different dates at different areas within Babati District were both found trafficking in Narcotic drugs namely; Catha edulis commonly known as "Mirungi" weighing 3.85 kilograms and 3.95 kilograms respectively.

Upon conviction, the Resident Magistrate's Court of Manyara at Babati sentenced the 1st respondent to five years imprisonment whilst the 2nd and 3rd respondent were respectively sentenced by the District Court to three months' conditional discharge and payment of fine at the tune of Tshs. 1,000,000/=.

During the court's inspection at the Court of Resident Magistrates of Babati and that of the District Court of Babati, I apprehended doubts as to the correctness or appropriateness of the imposed sentences aforementioned by the trial courts. Hence, these consolidated revision applications subject of this ruling.

When these applications were called on for hearing, the Republic was entertained through Ms. Kowela Ms. Makala and Ms. Mahanyu (SAs)

whereas the respondents were not present as they were not traceable by the court.

All the learned state attorney were of the considered view that, the imposed sentences to the respondents were inconformity with the law as the words "upon conviction shall be liable to imprisonment for a term of thirty years" does not mandate the sentence to be not less than **thirty (30)** years jail.

In order to be safer in ascertaining correctness or otherwise of the said imposed sentences, I have to reproduce the relevant provision of the applicable law for the punishment herein under;

"15A(1) Any person who traffics in narcotic drugs, psychotropic substances or illegally deals or diverts precursor chemicals or substances with drug related effects or substances used in the process of manufacturing drugs of the quantity specified under this section, commits an offence and upon conviction shall be liable to imprisonment for a term of thirty years.

(2) For purposes of this section, a person commits an offence under subsection (1) if such person traffics in-

- (a) narcotic drugs, psychotropic substances weighing two hundred grams or below;*
- (b) precursor chemicals or substance with drug related effect weighing 100 litres or below in liquid form, or 100 kilogram or below in solid*

form;

*(c)cannabis or khat weighing not more than
fifty kilogram (Emphasis supplied)."*

By merely looking at the word "shall" one can easily form an opinion that, an imposition of thirty (30) years imprisonment is mandatory sentence for an accused person found guilty of the offence of trafficking in narcotic drugs c/s 15A (1) and (2) (c) of the Act (*supra*). However, I agree with the learned state attorneys that the word "shall" used in the statute does couch to a mandatory sentence of thirty years' jail. The sentence of **thirty (30)** years' imprisonment is the maximum sentence that our courts may impose depending on the aggravating and mitigating factors unlike to section 15 (1) (b) of DCEA, 2015 where the punishment to a convict reads;

*"Commits an offence and upon conviction **shall be
sentenced to life imprisonment** (bold mine)."*

(See also section 197 and section 154 (2) of the Penal Code, Cap 16, Revised Edition, 2019 which set mandatory penalties as opposed to section 15A (1) of DCEA as well as section 198 of the Penal Code which prescribe a sentence from an absolute discharge to maximum sentence of thirty (30) years imprisonment.

Considering the wording of the statute, I am of the considered view as that, the learned state attorneys that, the statutory sentence to be imposed under section 15A (1) of the DCEA is discretionary. The Tanzania Sentencing Manual at page 4, also guides me and it reads;


*"The courts have held that if the law reads: **"shall be liable to be sentenced"** then this sets out a discretionary sentence up to a maximum amount. For example, the punishment for manslaughter is, "Any person who commits manslaughter is liable to imprisonment for life." The maximum sentence is "life imprisonment" but the courts may sentence the convict for up to this period. In other words, the sentence can range from absolute discharge to life"*

Basing on the above demonstrations, I am of the view that, the trial courts' sentences imposed against the respondents herein were in accordance with the law, the same are hereby confirmed. Cases files to be returned to their respective registries and imposed sentences be carried out as ordered.

It is so ordered

DATED at ARUSHA this 21st December, 2022




SGD: M. R. GWAE
JUDGE