

THE UNITED REPUBLIC OF TANZANIA  
JUDICARY

IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

CRIMINAL APPEAL NO.59 OF 2021

*(Originating from Mtwara District Court in Criminal Case No.46 of 2021)*

JUMA HASSANI TEKA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

Date of Hearing: 04/02/2022

Date of Judgment: 18/02/2022

JUDGMENT

MURUKE, J.

Juma Hassani Teka, the appellant, was charged and convicted by the District Court of Mtwara on his plea of guilty of the charge of unlawful possession of prohibited plants contrary to section 11 (1) (d) of the Drugs Control and Enforcement Act, [Cap. 95 R. E. 2019]. The particulars of the offence alleged that on the 18<sup>th</sup> day of March, 2021, at Magomeni area with in the Municipality and Region of Mtwara, the appellant was found in unlawful possession of Prohibited Plants to wit five hundred (500) grams of Cannabis Sativa commonly known as "Bhangi". Upon such conviction, the trial court passed a minimum sentence on the appellant to serve thirty (30) years imprisonment term.

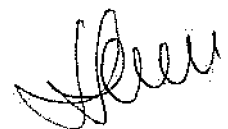
Despite pleading guilty, the appellant is aggrieved and dissatisfied with the decision of the trial court. Thus, he has lodged his appeal comprising

  
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five grounds in his petition of appeal. The grounds raised by the appellant can be paraphrased thus: -

1. That the trial court sentence was too excessive and in contravention with the law.
2. That the trial Magistrate erred in law and facts in convicting the appellant on the alleged plea of guilty, plea which was imperfect, ambiguous and unfinished, hence the court erred in treating it as plea of guilty.
3. That the reply of the appellant was not invited during the tendering and admission of exhibits (P1, P2 and P3) and also the proceedings do not reflect if exhibits P1, P2 and P3 were read out in court.
4. That the appellant's plea of guilty was as a result of mistake or misapprehension.
5. That the trial Magistrate erred in law and facts in convicting the appellant since was not competent to testify in court due to his mental illness.

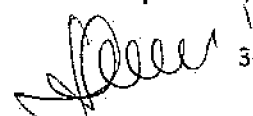
When this appeal came for hearing on 04/02/2022 the appellant appeared in person and unrepresented. Whereas, Mr. Wilbroad Ndunguru, learned Senior State Attorney, appeared for the respondent, Republic. When the appellant invited to submit, he opted his grounds be adopted and form part of his submission. On the part of the respondent, Mr. Ndunguru objected the appeal and conceded with the trial court on the sentence. He stressed that the sentence is only one and mandatory in nature which is thirty (30) years if found guilty. In the light of that submission Mr. Ndunguru was of the view that the first ground be dismissed.



Reacting on the 2,4 and 5 grounds the learned Senior State Attorney submitted that there was no any problem with the plea of the appellant which was properly taken. At page 8 of the typed proceedings of the trial court the appellant was reminded of the offence and he pleaded guilty by saying it is true that he was found with unlawful possession of prohibited plants-bhangi. Thus, the trial court recorded his plea of guilty. Mr. Ndunguru went further and argued that the facts containing the details of how the offence was committed were read to the appellant who eventually admitted them. As to the complaint of mental illness Mr. Ndunguru was of the view that the trial court proceedings is clear that the appellant had no mental problem. Thus, the complaint that he did not understand what was read to him was just an afterthought which came after the appellant was sentenced. The learned Senior State Attorney argued this court to dismiss ground 2,4 and 5 for lacking merits.

As to the third ground, the appellant complained that he was not invited to comment on the exhibits admitted and which were also not read in court. In reacting on those two complaints Mr. Ndunguru referred this court to page 9 and 10 of the typed proceedings whereby the trial court reminded the appellant about his plea and admission of the facts. The appellant maintained his plea and admission of the facts. He further argued that the appellant was asked about those three exhibits to be received as part of the evidence, whereby the appellant told the trial court that he had no objection to those exhibits to be received as exhibits as seen at page 10 of the typed proceedings of the trial court.

In addition, as to the complaint of failure to read exhibit P1, P2 and P3 after its admission Mr. Ndunguru argued that since the appellant admitted the offence hence it was not necessary to tender the exhibit or read it in court, citing the case of **Mathias Barua vs. The Republic**,

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Criminal Appeal No.105 of 2015 CAT at Tanga (unreported). The learned Senior State Attorney winded his submission by arguing that in totality the appeal lacks merits.

In a very short rejoinder, the appellant asked this court consider him and reduce the sentence since he has learnt a lesson and now is aware of what he did was totally wrong.

I have gone through the records of the trial court, grounds of appeal and the submissions of the parties. In view of the grounds of appeal and the submissions of the parties it is pertinent to resolve the first, second and fifth grounds distinctively. On first ground, the complaint by the appellant is on the sentence meted by the trial court that is too excessive and in contravention with the law. In order to be able to tackle this complaint it is imperative to reproduce section 11 (1) (d) of the Drugs Control and Enforcement Act (supra) which reads: -

“(1) Any person who –

(d) produces, possesses, sells, purchases, transports, imports into Mainland Tanzania, exports, use or does any act or omits to do anything in respect of prohibited plants which act or omission amounting to contravention of the provisions of this Act, commits an offence and upon conviction shall be liable to imprisonment for a term of not less than thirty years.”

In view of the above provision of the law I subscribed to what the learned Senior State Attorney submission that the provision of the law contains only one sentence which is mandatory in nature. Indeed, as to the charge and facts read to the appellant shows that the appellant was found in possession of the prohibited plants of Cannabis Sativa

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commonly known as Bhangi to wit 500 grams in contravention of the law. The sentence passed by the trial court was a minimal sentence since the provision of the law provides that upon conviction shall be liable to imprisonment for a term of not less than thirty years. Trial court was empowered to pass a sentence of more than thirty years imprisonment term. In the light of that observation, I find the first ground of appeal lacking merits, hence, dismissed.

Regarding the third ground of appeal, I concede to what Mr. Ndunguru submitted in reply that the when the prosecution prayed to tender exhibit P1, P2 and P3 the trial court invited appellant to comment on the exhibits which the prosecution intended by then to tender but the appellant had no objection to those exhibits. To fortify this, I reproduced herein below what the appellant told the trial court as envisaged at page 10 of the typed proceedings of the trial court: -

**"Accused:** No objection on those three exhibits"

In addition, the trial court record shows at page 11 of the typed proceedings that exhibit P1 and P3 were read loudly soon after its admission. It is imperative to reproduce an extract on page 11 of the typed proceedings as follows: -


**"State Attorney:** Your Honour we pray to read loudly contents of exhibits P1 and P3 before this court.

Sgd: L.M. Jangádu

RM

11.06.2021

**Court:** Prayer granted. State attorney is allowing(sic) to read contents of all the said document.



Sgd:L.M. Jangádu

RM

11.06.2021

**State Attorney:** Your honour, those are all about contents of exhibit P1 and P3.

Sgd: L.M. Jangádu

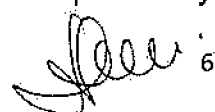
RM

11.06.2021"

As far as to the above excerpt is concerned, there is no doubt that the exhibit P1 and P3 were read loudly in court soon after its admission. As to language complained by the appellant used by the State Attorney and seen hereinabove that "those are all about the contents of exhibit P1 and P3" does affect his prayer of reading the contents of exhibit P1 and P3. Besides, exhibit P2 was not read after its admission due to its nature. Holding of the Court of Appeal in the case of **Mathias Barua vs. The Republic** (supra) at page 3 as cited by Respondent counsel, insisted that:-

*"We wish to point out that once it is shown on record that the accused person on his own free will pleaded guilty to the offence unequivocally then that is enough to support the charge with which the accused is charged. Tendering of exhibit be it an object or document is not a legal requirement though is desirable to do so, to ground conviction."*

In the present case, exhibit P1 and P3 were read in court after admission which grounded conviction upon appellant's plea of guilty to the offence. In view of the cited case and submission made by Mr. Ndunguru learned state Attorney it was not necessary for the prosecution to tender those exhibits since the appellant unequivocally


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pleaded guilty to offence charged. Thus, in light of the above analysis I find the third ground of appeal lacking merits.

Fifth ground the appellant complained that the conviction was erroneously entered by the trial court since had mental illness which made him incompetent to testify. Surely, as contended by the learned Senior State Attorney it is true that this is an afterthought which came after the appellant being sentenced. The state of mind could have been raised from the early stages of the case and not on appeal. Besides, on 14.04.2021 when the case was read in the trial court for the first time the charge was read and explained to the appellant and he pleaded not guilty to the charge. In between the case was adjourned for several times till 10.06.2021 when the case came for Preliminary Hearing. During this stage the charge was reminded to the appellant who changed his plea by pleading guilty to the offence. From 14.04.2021 to 11.06.2021 no where the appellant or his surety or relative alerted the trial court about his mental illness. In the upshot, I find this ground is devoid of merits hence I dismiss it.

Coming to the second and fourth grounds which will be tackled by the following issue, whether the plea by the appellant was unequivocal. Before I go a bit further it is important to familiarise with the criteria of interfering with the plea of the appellant as dismissed in the case of **Laurence Mpinga v. R** [1983]166 and adopted by the Court of Appeal in the case of **Kalos Punda vs. R**, Criminal Appeal No. 153 of 2005 (unreported). These criteria are:

- i. 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;



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- ii. That he pleaded guilty of mistake or misapprehension;
- iii. That the charge laid at his door disclosed no offence known to law; and,
- iv. That upon the admitted facts he could not in law have been convicted of the offence charged."

On the first instance when the appellant was brought in court, he pleaded not guilty to the offence as reflected at page 1 of the typed proceedings of the trial court. On 10.06.2021 the case came for Preliminary Hearing whereby the charge was read and explained afresh to the appellant who in turn changed his plea. At this juncture the appellant pleaded guilty whereby he told the trial court that he was found in unlawful possession of prohibited plants, the Cannabis Sativa-Bhangi. This is reflected at page 7 of the typed proceedings of the trial court. The record further shows that at page 8 of the typed proceedings facts containing the ingredients of the offence which were read and explained to the appellant who eventually admitted them as true and correct. Furthermore, the trial court record reveals that on the material date the prosecution prayed for short adjournment. The adjournment was purposely for tendering the exhibits. The prayer by the prosecution was granted hence the matter came for tendering exhibits on 11.06.2021 as it seen at page 9 of the typed proceedings. Before the prosecution tendered the exhibits the trial court asked the appellant if he maintain his plea of guilty on the charge and admitted facts. The record of trial court shows that the appellant maintained his plea and admission of the facts that he was found in possession of prohibited plants unlawfully.

Following the above detailed explanation about the plea of guilty of the appellant to the offence I am persuaded that the appellant's plea was not featured with any mistake or misrepresentation or ambiguity whatsoever

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from the prosecution or the trial court. As I have alluded earlier that on the first instance the appellant denied the charge by pleading not guilty. But when the case came for Preliminary Hearing, the charge was read and explained afresh to the appellant who pleaded guilty to charge and further admitted the facts read and explained to him. Moreso, even when the matter came for tendering exhibits P1, P2 and P3 the appellant maintained his plea of guilty and admission to the facts constituting the charge.

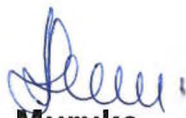
Indeed, I have gone through the entire record of the trial court and the submission of the appellant nowhere he pointed out the mistake or misrepresentation committed by either the prosecution or trial court during his plea. As to the admission of exhibits as already amplified above there is no any legal requirement which obliged the prosecution to read the contents of the exhibits admitted following unequivocal plea of guilty of the appellant. Though it was desirable and surely the prosecution complied as it appears at page 11 of the typed proceedings of the trial court. More ever, the appellant had signified before this court that his plea was unequivocal vide his rejoinder submission where he argued this court to consider him and reduce the sentence because he has learnt that what he did was totally wrong. In view of that analysis, there is no doubt that appellant's plea of guilty was completely unequivocal hence, I find the second and fourth grounds of appeal lacking no merits. Thus, I dismiss it.

From the foregoing reasons, the appeal is dismissed and accordingly, the conviction and sentence are endorsed.

It is so ordered.





  
**Z.G. Muruke**  
**Judge**  
**18/02/2022**

Judgment delivered in the presence of the appellant in person, and Ajuaye Bilishanga, and Faraja George learned State Attorneys for the respondent.



  
**Z.G. Muruke**  
**Judge**  
**18/02/2022**