

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

DC. CRIMINAL APPEAL NO. 65 OF 2021

GIDION S/O IBRAHIM 1st APPELLANT
FRANCIS S/O BARAKA 2nd APPELLANT
SHABAN S/O RAMADHANI 3rd APPELLANT
CHRISTOPHER S/O KACHINGWE 4th APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the decision of the District Court of Sumbawanga at Sumbawanga)

(G. J. William, RM)

Dated 16th day of June 2021

In

Criminal Case No. 213 of 2020

JUDGMENT

30/03 & 16/05/2022

NKWABI, J.:

The appellants stood charged with being in possession of cannabis bhang contrary to section 15A (1) and 15A (2) (c) of the Drugs Control and Enforcement Act No. 5 of 2015 read together with the first schedule of the Drugs Control and Enforcement Act No. 5 of 2015. The respondent alleged that the appellants were arrested on the 11th March, 2020 at Laela B village within Sumbawanga District in Rukwa region in unlawful possession of 405.1

grams of cannabis bhang. The appellants disputed to have committed the offence. Six witnesses testified in court and seven exhibits were admitted in court. The appellants too entered their respective defences. Then the trial court was satisfied that the respondent proved its case, found guilty, convicted and sentenced the appellants.

Affronted with the conviction and sentence of the trial court, the appellants paraded seven grounds of appeal in this court as they appear in the petition of appeal. The basic complaints in their appeal are that the charge was not proved beyond reasonable doubt since it is based on the evidence of search which was conducted without an independent witness/ ten cell leader to witness, the chain of custody was admitted contrary to the law and no receipt was tendered for the alleged seized Cannabis Sativa violating the requirement of section 38(3) of the Criminal Procedure Act Cap 20 R.E. 2019 among other grounds.

During the hearing of this appeal, the appellants were unrepresented while the Respondent was ably represented by Mr. John Kabengula, learned State Attorney. While the appellants insisted that the charge was not proved to

the required standard, Mr. Kabengula argued that it was. He reasoned that that was an emergency search and an independent witness one PW3 Albert.

I have gone through the proceedings of the trial court, I am inclined to accept the arguments by the appellants that this case was not proved beyond reasonable doubt. I decline to buy the argument of Mr. Kabengula that that was an emergency search since it seems the police got information about bhang smoking in the morning and went to the scene in the afternoon. In the circumstances, that is not an emergency search worth the name. Further, the alleged independent witness did not witness the search but was called after the seizure had been done. That is contrary to the law, as it contravenes the procedure stipulated in **Chaali Kiama v. Republic** [1979] LRT 54 where it was held that the police ought to have called a civilian to witness the search.

Now, since the caution statements had challenged their voluntariness and regularity, they require corroboration which is wanting in this case. Mr. Kabengula stated that there was corroboration by the testimony of PW3 Albert, I have already discredited his testimony, it cannot corroborate evidence that needs corroboration.

I am of the view that in the circumstance of this case convictions have to be quashed and sentences set aside. I proceed to do so. The appellants have to be set free unless they are otherwise held for other lawful cause(s).

It is so ordered.

DATED at **SUMBAWANGA** this 16th day of May 2022.




J. F. NKWABI

JUDGE