

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**MWANZA DISTRICT REGISTRY**  
**AT MWANZA**

**HC. CRIMINAL APPEAL No. 143 OF 2021**

*(Originating from Criminal case No. 112 of 2021 of the District Court of Nyamagana  
at Mwanza)*

**MWITA S/O MARWA-----APPELLANT**

**VERSUS**

**THE REPUBLIC-----RESPONDENT**

**JUDGMENT**

*Last Order: 11.04.2022*

*Ruling date: 16.05.2022*

**M.MNYUKWA, J.**

The appellant, Mwita s/o Marwa was charged before the District Court of Nyamagana for the offence of trafficking of Narcotic Drugs contrary sections 15(1) and 2(c) of the Drugs Control and Enforcement Act, Cap 95 RE 2019. It was alleged that on 24<sup>th</sup> day of July 2021 at Buzuruga Bus Stand within Nyamagana District in Mwanza Region the



appellant was found in unlawful possession of 4.4 kilogram of Narcotic Drugs commonly known as Bhang.

Upon arraignment before Nyamagana District Court, on 08.09.2021 the charge was read and the appellant required to plea and the appellant replied "Ni Kweli" and the court entered a plea of guilty. The matter was adjourned and on 09.09.2021 facts were read over to the appellant who admitted to all facts as the court record shows that the appellant replied as follows: "I admit to all facts which read over to me". Thus, the trial magistrate proceeded to convict the appellant as charged and sentenced him to life imprisonment.

Aggrieved, the appellant is now appealing to this court with 6 grounds of appeal as that; -

- 1. That, the trial magistrate grossly and incurably erred in law to convict the appellant relying on his own plea of guilty which the section 228(1) of the Criminal; procedure Act, Cap 20 R.E 2019 was not properly complied by the trial court.*
- 2. That, since the judgement is silent about whether the trial Court asked the appellant to admit or deny the substance of the charge it is difficult to prove that the appellant admitted to the charge and facts which ready over to him.*
- 3. That, the trial magistrate erred in law and fact to convict and sentence the appellant basing on appellant own plea of guilty*



*while the trial court failed to elaborate and record everything which the accused (appellant) says in his own words which indicate that he had actually pleaded guilty. Ref The Case of **Patrick Rammer Vs. Republic** (1972) 56 Criminal Appeal R.196.*

- 4. That, the appellant's conviction and sentence was wrongly acted while the trial court failed to explain vividly to the appellant all on the facts and ingredient to all them. Ref The Case of Nyaku s/o **Ntandu Vs Republic** 1968 HCD No 556 and **Alphonse s/o Kafeta Vs Republic** 1974 Tlr No. 66.*
- 5. That, the trial magistrate overlooked himself in law and procedure to convict and sentence the appellant on the plea entered which was not clear and free from ambiguities, so was equivocal in the eyes of the law.*
- 6. That, the trial magistrate erred in law and fact for failure to note that the so called plea of guilty was perfunctory taken by the trial court and the appellant was deprived an opportunity to plea after each of memorandum of facts read out by the court. So the plea against the appellant was not free and voluntary but involuntary plea which is void in law.*

The appellant prayed this court to allow this appeal, quashing the conviction, set aside the sentence of life imprisonment and set the appellant free.



At the hearing the appellant appeared and prosecuted his appeal in person while the Republic was represented by the Ms. Sabina Choghoghwe, learned state attorney. The appellant prays this court to adopt his grounds of appeal and prays the state attorney to submit and if needful, he would rejoin.

On her introductory note, Ms. Sabina Choghoghwe supported the appeal for the reasons she gives forth. She avers that the accused was charged under section 15(1) and (2)(c) of the Drugs Control and Enforcement Act, Cap 95 RE 2019, and pleaded guilty. She submitted that it is the position of the law that when the accused is convicted by his own plea of guilty can not appeal on conviction but on sentence as provided for under section 360(1) of the CPA Cap 20 RE 2019.

She went on that, the plea of guilty must be unequivocal and if otherwise it can be challenged. Referring to the trial court's records, she avers that the appellant plea of guilty was equivocal for failure of the trial court to take the appellant plea before the facts were read to him. She avers that the accused plea was once taken on 08.09.2021 where he pleaded guilty and the matter was adjourned to 09.09.2021, but the trial court proceeded to read facts without first taking the appellant's plea.



She further state that, when the facts were read, the records do not show whether the accused was given a chance to respond at every fact when read over to him. She insisted that, for the offence like this, which attracts higher punishment, the appellant was required to be given chance to respond to every fact for the court to draw inference if the appellant admits. She referred this court at page 8 of the case of **Michael Adrian Chaki vs Republic**, Criminal appeal No. 399 of 2019 CAT (unreported) that the Court of Appeal gave directives on how to take the accused plea insisting on requiring the accused person to respond to every fact read over to him. She retires supporting this appeal.

The appellant was brief as he prays this court to adopt his grounds of appeal and insisted that, he did not admit all facts which constitutes the offence. He retires prays this court to set him free.

In determining this appeal, and for the reasons that the prosecution was able to note the procedural irregularities on record that led to the conviction of the appellant, I agree with Ms. Sabina that the appellant plea before the trial court was not unequivocal plea therefore it was wrong for the trial court to rely on the appellant's plea of guilty and enter the conviction. As it stands, an unequivocal plea of guilty is a plea which is clear, complete and not ambiguous or vague and it is sanctioned under



section 228(2) of the Criminal Procedure Act [Cap. 20 R.E. 2019] (the CPA) which reads:

*" Where the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses and the magistrate shall convict him and pass sentence upon or make an order against him, unless there appears to be sufficient cause to the contrary"*

It is worth to note that, in different occasions, the Court of Appeal of Tanzania has given directives on how the plea of the accused should be taken to ascertain as to whether the accused pleaded guilty to the charge or not and failure of which renders whole process nullity.

In the case of **R v. Yonasani Egau and Others** (1942)9 EACA, 67 which was referred to with authority in the recent case of **Philipo s/o Faustine @ Chitembele Vs Republic** Criminal Appeal No. 666 of 2020 the meaning and what constituted plea of guilty was well elaborated where the court held that: -

*"In any case in which a conviction is likely to proceed on a plea of guilty, it is most desirable not only that every constituent of the charge should be explained to the accused but that he should be required to admit or deny every constituent and what he says should be recorded in a form that will satisfy an appeal court that*



*he fully understood the charge and pleaded guilty to every element of it unequivocally"*

As observed by Ms. Sabina (SA), the appellant plea before the trial court was firstly not unequivocal plea for the reason that the plea "NI KWELI" alone cannot be taken as a plea against the offence charged for it is impossible to ascertain what the appellant meant that to be true. I say so because this kind of plea is ambiguous as it is not clear whether the appellant denied or admitted the truth of the charge, though *prima facie* appear to be a plea of guilty as it is not necessarily be so.

Furthermore, though the plea was not unequivocal, the same trial court did not follow the requisite procedures of taking a plea at a trial from when the matter was adjourned, that is the next date the appellant appeared before the trial court, he was to be reminded of the offence he was charged with.

From the above given reasons, I find merit in this appeal and proceed to allow it. Consequently, the trial court's plea of guilty order of 9.09.2021 and the conviction are quashed and the sentence is set aside.



I further direct that the trial court should start afresh with hearing of Criminal Case No. 112 of 2021 by taking appellant's plea afresh by another magistrate.

It is so ordered.



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**M. MNYUKWA**  
**JUDGE**  
**16/05/2022**

**Court: Judgement** delivered in the presence of the counsel for respondent and in the presence of the appellant in person.

A handwritten signature in blue ink, identical to the one above.

**M. MNYUKWA**  
**JUDGE**  
**16/05/2022**