

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

**CRIMINAL APPEAL NO. 56 OF 2022**

*(Originating from Criminal Case No. 110 of 2021 in the Resident  
Magistrate's Court of Mtwara at Mtwara)*

**THE DIRECTOR OF PUBLIC PROSECUTION..... APPELLANT**

**VERSUS**

**SHARIFU SHAIBU CHAKUPEWA ..... RESPONDENT**

**JUDGEMENT**

*Date of Last Order: 11.05.2023*

*Date of Judgement: 12.05.2023*

**Ebrahim, J.**

The Director of Public Prosecutions has filed the instant appeal basically seeking for the intervention of this court to order the trial court to admit as an exhibit the Government Chemist Report.

The genesis of the matter arises from Criminal Case No. 110 of 2021 which is still pending at the Resident Magistrate's Court of Mtwara at Mtwara. On 21.04.2022, in the course of court proceedings, the prosecution side intended to tender into evidence a report from the Government Chemist. Counsel for the defence objected and both parties

submitted before the trial court for and against the admission of the said document. In the end, while assigning his reasons, the trial Magistrate rejected to admit the said report as an exhibit and instead he admitted it for identification purposes only. Following the ruling of the trial court, the prosecution side has lodged the instant appeal complaining that the trial magistrate erred in law to reject to admit the said report into exhibit on the reason that **section 48A(1) of Drugs Control and Enforcement Act, Cap 95 RE 2019** was violated; and that it was contrary to the rules of evidence.

When the matter was called for hearing, the Appellant was represented by Mr. Edson Lawrence Mwapili assisted by Ms. Farida Kiobya both learned State Attorneys. The Respondent was represented by advocate Rainery Songea.

Mr. Mwapili submitted before the court that the trial court misinterpreted s.48A(1) of the Drug Control Enforcement Act, Cap 95 RE 2019 because the report was supposed to be tendered by the police. He submitted on the 2<sup>nd</sup> and 4<sup>th</sup> grounds of appeal together inviting this court to the Court of Appeal Case of **DPP V Sharif Mohamed Athumani & 6 Others**, Criminal Appeal No. 74 of 2016 pg 4 which discussed on the four types of evidence. He concluded on the point that

the Government Chemist Report is a documentary evidence which has satisfied all principles of the documentary evidence and the requirement of section 48 A(1) of Cap 95. He further referred to **section 382 (c) of the Criminal Procedure Act, Cap 20 RE 2022** whereby the High Court in the exercise of its appellate jurisdiction may alter, reverse or make amendments of an order that may appear just and proper.

Responding to the arguments by Mr. Mwapili, advocate Songea contended that it is the trial court that has mandate to admit the exhibit during the trial. This court cannot impose on the trial court to admit an exhibit on the on-going proceedings and to do would be interfering with the decision of the trial. He urged this court to follow the spirit of the Court of Appeal in the cited case of **DPP Vs Sharif Mohamed @ Athumani (supra)** and let the proceedings continue as the case has been pending since April 2022.

In rejoinder, Mr. Mwapili reiterated what he submitted in chief.

I have dispassionately followed the rival submissions by the counsels from both parties. I out-rightly agree with advocate Songea that by issuing an order to the trial court to admit a document into evidence while the matter is still proceeding because the Appellant was not satisfied that the document was rejected would be interfering with the

judicial discretion of the trial. More- so, that case would be adjudicated and heard by two courts at a go.

I must state out-rightly here that as a general principle, an appellate court cannot interfere with the exercise of the discretion of the lower court unless it is satisfied that the decision concerned was made on a wrong principle or that certain factors were not taken into account.

At this instant I subscribe to the holding of the Court of Appeal in the case of **TCCIA Investment Co. Ltd Vs DR. Gideon H. Kaunda**, Civil Appeal No. 310 of 2019 which quoted with approval a decision of the erstwhile Court of Appeal for East Africa in the case of **Mbogo and Another v. Shah** [1968] 1 EA 93, that:

*"The relevant passage is as per Sir. Clement de Lestang VP at page 94 thus: I think it is well settled that this Court **will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that the decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion,**"[Emphasis added].*

More so, the law i.e., **section 43(2) of the Magistrate's Court Act, Cap 11 RE 2019** provides clearly no appeal shall lie on the order of the District or Resident Magistrate Court unless such order has the effect of finally determining a criminal charge or suit. For ease of reference section 43(2) of the Cap 11 RE 2019 reads as follows:

*"Subject to the provisions of subsection (3), **no appeal or application for revision shall be against or be made in respect of any preliminary or interlocutory decision or order of the district Court or a Court of a resident magistrate unless such decision or order has the effect of finally determining the criminal charge or the suit**".*

Tailoring the above position of the law with the instant matter, the Appellant have brought the instant appeal in the midst of the trial at the trial court and where the trial court has made its decision within its jurisdiction. The act of the Appellant depicts clearly their way of interfering with the case or proceedings while the matter is still continuing which in all four shows that they are not committed in ensuring timely justice to all. In fact, the picture exhibited is that the proceedings should go in their favour or else.

That being said and done, I find this appeal to be unmeritorious and indeed delays the continuation of the case while the appellant is aware

that the case has not been finally decided and in any case they would have right of appeal. Accordingly, I dismiss the appeal. I remit the file to the trial court with an order that the matter should proceed from where it ended on the last order of the trial court.

Accordingly ordered.



A handwritten signature in blue ink, appearing to read 'R.A. Ebrahim'.

**R.A. Ebrahim**  
**JUDGE**

**Mtwara**  
**12.05.2023**