

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOB A DISTRICT REGISTRY

AT BUKOB A

CRIMINAL APPEAL No. 98 OF 2021

(Originating from Criminal Case No. 127/2020 of District Court of Ngara)

NYABENDA BERNADO @ SILAS @ GWASA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

K. T. R. MTEULE, J.

22nd May 2023 & 22nd May 2023

The appellant Nyabenda Bernado @ Silas @ Gwasa was convicted with unlawful possession of prohibited plants contrary to Section 11 (1) (d) of the Drugs and Enforcement Act No. 5 of 2015 and sentenced to serve an imprisonment term of not less than 30 years. The matter was before the District Court of Ngara in Criminal Case No. 127 of 2020.

Dissatisfied with the conviction and sentence, the Appellant preferred this appeal raising 11 grounds of Appeal. This appeal was called for hearing today on 22/05/2022 where the appellant was heard on the grounds of Appeal. Among other grounds the appellant challenged the decision of the District

Court for having convicted him on insufficient evidence to prove the case beyond reasonable doubt. Among the ground argued concerned failure to call important witnesses such as the chief government chemist, the poor chain of custody for the exhibits and failure to tender and admit the actual bhang alleged to have been found in possession of the accused.

Mr. Amani Kilua did not object the appeal on one ground of failure to tender the alleged exhibit. He admitted that the said bhang was not tendered and his scrutiny discovered a lot of discrepancies in the chain of custody. He traces the exhibit from the date of seizure where it kept on diminishing in size and weight as the custody exchanged from one hand to another. It started with a seizure of 88 rolls of bhang, one green sulphate bang and one white sulphate bag both filled with leaves but at the stage of Chief Government Chemist, only 203.4 grams were weighed and finally nothing in Court.

Having considered parties submissions, I agree that there was no sufficient evidence to prove the case beyond reasonable doubt in the District Court. The doubt is intensified by the weight and amount of the exhibit said to have been seized as it diminished within the trends of chain of custody from 88 rolls of bhang and two sulphate bags to nothing in Court. It is on

this reason I find the Hon. Magistrate to have erred in convicting and sentencing the accused person basing on insufficient evidence.

On the above reasons I allow the Appeal and quash and set aside the conviction and sentence. The appellant is therefore set free unless held for another purpose. It is so ordered.

Dated at Bukoba this 22nd May, 2023.



Katarina Revocati Mteule
Judge
22/05/2023