

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA  
CRIMINAL APPEAL NO. 97 OF 2021**

**ADAM s/o SELEMAN ..... APPELLANT  
VERSUS  
REPUBLIC ..... RESPONDENT**

**[Appeal from the Decision of District Court of Bariadi at Bariadi]**

**(Hon. M.M. Nyangusi RM)**

**dated the 28<sup>th</sup> day of October, 2021  
in  
Criminal Case No. 144 of 2020**

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**JUDGMENT**

10<sup>th</sup> February & 25<sup>th</sup> April, 2023.

**S.M. KULITA, J.**

This is an appeal from the District Court of Bariadi. The appellant herein above was charged with *Illicit Trafficking in Narcotic Drugs*, contrary to the provision of section 15A(1) of the Drugs Control and Enforcement Act, No. 5 of 2015 as amended by section 9 of Act No. 15 of 2017.

In a nut shell, the prosecution case as was unfolded by its six witnesses is that, on the 13<sup>th</sup> day of February, 2020 at Lukungu Lamadi area, within Busega District in Simiyu Region, the Appellant herein was found unlawfully conveyancing khat commonly known as "Mirungi" weighting 15.651 kg from Bunda to Lamadi by using a motor cycle with registration No. MC 603 ASJ make SANLG.

The Accused person was convicted and sentenced to serve the imprisonment of 30 (thirty) years. Aggrieved with both, conviction and sentence, the appellant lodged this appeal relying on the following 5 (five) grounds;

1. That, the case was not proved beyond all reasonable doubts.
2. That, the Government Chemist was not called to testify on the Examination Report that he is alleged to have filled.
3. That, the trial Magistrate erred in law and fact for admitting as exhibit the Motor Cycle with Registration No. MC 603 AST make SUNLG.
4. That, the Prosecution side failed to call as a witness a person whom the Appellant had carried as a passenger to testify in trial.

5. That, the trial court convicted the appellant in the absence of sufficient evidence from the prosecution side.

The matter was argued through oral submissions. The Respondent, Republic was represented by Ms. Caroline Mushi, State Attorney while the Appellant was unrepresented.

In his submission, the Appellant prayed for his appeal to be allowed and he be acquitted. He further prayed for the court to adopt the grounds that he has raised in his petition of appeal as the submission for his appeal.

In reply thereto, the Respondent's Counsel, Ms. Caroline Mushi, State Attorney submitted in respect of proof of the case at the required standard, which involves grounds No. 1 and 5, that the case at the trial court was proved beyond all reasonable doubts. She stated that it is ample in the record that the arresting officers, PW2 and PW3 arrested the Appellant while at Lukungu Road Block, Lamadi after they had searched the bag that he was holding while riding a motor cycle and found it containing 46 parcels of khat. The State Attorney submitted to the effect that PW2 filled the certificate of seizure (Exh. P4) for the said khat.

Ms. Caroline Mushi, State Attorney further stated that another Police Officer (PW1) testified to the effect that the exhibit was taken to the Weight and Measurement Agency office for weighting it. The same was found to be 15.651 Kilograms weight. The State Attorney further narrated that sample of exhibit P4 weighting 360 grams were taken to the Government Chemist for examination. She further submitted that PW4 who is the Retired Officer from the office of the Government Chemist, Mwanza branch examined the said sample of leaves weight 360 grams that had been taken to him by a Police Officer (PW5) and certified them being khat.

The Counsel concluded to submit on those 1<sup>st</sup> and 5<sup>th</sup> grounds by stating that, for the said evidence, as adduced by the prosecution at the trial court, the case was proved beyond all reasonable doubts as rightly concluded by the trial Magistrate.

Submitting on the 2<sup>nd</sup> ground of appeal that the Government Chemist was not called to testify on the Examination Report that he is alleged to have filled, the State Attorney replied that the said officer was called, turned up and testified on that as PW4.

As for the 3<sup>rd</sup> ground of appeal, that the trial court erred to admit as exhibit the Motor Cycle with Registration No. MC 603 AST make SUNLG. On this, the State Attorney replied that it was right for the trial court to admit it as exhibit and confiscate the same as it was involved in the commission of the offence, that is transporting the khat in dispute.

Replying the 4<sup>th</sup> ground of appeal that Prosecution's failure to call as a witness a person whom he had carried as a passenger to testify during trial, the Respondent's Counsel, Ms. Caroline Mushi submitted to the effect that the Appellant never raised that issue during trial. He never even cross examined the witnesses who had arrested him though they all testified before the trial court. The Counsel averred that failure of the Accused to cross-examine the witnesses implies admission of what has been testified.

The State Attorney concluded by praying for the appeal to be dismissed.

The Appellant had nothing to rejoin, hence the submissions ended up there.

From the submissions, the following is my analysis;

Starting with grounds No. 1 and 5 collectively, the appellant challenges that the case was not proved beyond all reasonable doubts. He said that the evidence adduced by the prosecution side during trial was not sufficient to

convict him. Actually the standard of proof in criminal cases is beyond reasonable doubts. The duty of the prosecution to prove the case beyond reasonable doubt is universal. In **Woolmington v. DPP (1935) AC 462**, it was held inter alia that, it is a duty of the prosecution to prove the case and the standard of proof is beyond reasonable doubt. This is a universal standard in criminal trials and the duty never shifts to the accused. The term beyond reasonable doubt is not statutorily defined but case laws have defined it. I am fortified in this view to refer to the case of **Magendo Paul & Another v. Republic [1993] TLR 219** where the Court of Appeal held;

*"For a case to be taken to have been proved beyond reasonable doubt its evidence must be strong against the accused person as to leave a remote possibility in his favour which can easily be dismissed."*

As for the matter at hand, the issue is whether the ingredients of the charged offence were all proved and whether the Appellant is responsible. The provision of **section 154A(1) of the Drugs control and Enforcement Act , No. 5 as amended by section 9 of Act No. 15 of 2017** provides;

*"Any person who traffics in narcotic drugs, .....commits an offence ....."*

From the above quoted provision you can find that ingredients of the offence include **trafficking** which means conveyancing or transporting of **narcotic drugs**. Section 2 of the Act defines "**drug**" or **narcotic drug** to mean substances set out in the **First Schedule to the Act**, Khat is among them. From the pleading and the record, it is undisputable that the subject matter in question for this matter is khat weighing 15.651 Kilograms. The issue for determination is whether the same had been found transported by the Appellant.

As submitted by the Respondent's Counsel, Ms. Caroline Mushi, State Attorney, the lower court's record transpires that the Police Officers who testified as PW2 and PW3 arrested the Appellant while in guard at Lukungu Barrier (Road Block) in Lamadi after they had searched the bag that he was holding while riding a motor cycle with Registration No. MC 603 AST make SUNLG (Exhibit P6) and found it containing 46 parcels of khat, when they searched it. PW2 filled the certificate of seizure (Exh. P4) for the said khats. The records further transpire that another Police Officer (PW1) testified to the effect that the leaves purported to be khats were taken to the Weight and Measurement Agency office for weighting it. The same were found to be 15.651 Kilograms weight. The evidence further reveals that sample of the

said khat, weighing 360 grams was taken to the Government Chemist for examination. PW4 who is the Retired Officer from the office of the Government Chemist, Mwanza branch examined the said sample of leaves, weight 360 grams that had been sent to him by a Police Officer (PW5) and certified them being khat.

For that piece of evidence in the record of which the State Attorney has also narrated in her submission, I find these two grounds of appeal, No. 1 and No. 5 have no legal weight, hence dismissed.

As for the 2<sup>nd</sup> ground that the Government Chemist was not called to testify on the Examination Report that he is alleged to have filled, I find the same has no merit as well. The record is vivid that the officer from the office of the Government Chemist namely Bonaventura Njuka Masambu was called to testify for the Prosecution. He turned up and testified on that as PW4. This ground also fails.

Now turning to the 4<sup>th</sup> ground which relates to the complaint that the Prosecution side failed to call as a witness a person whom he had carried as a passenger on the motor cycle that he was riding. On that, the learned State Attorney was fairly brief, she contended that the law does not specify a

particular number of witnesses required to prove a fact. Actually, that is a position of the law under **Section 143 of the Tanzania Evidence Act [Cap 6 RE 2019]**. The same was held in the case of **Yohanis Msigwa v. Republic [1990] TLR 148**.

It is upon the prosecution to choose as to which witness to produce and which evidence to tender. The elementary principle of law under section 143 of the Evidence Act that, there is no particular number of witnesses required to prove a fact was also held in **Gabriel Simon Mnyele v. Republic, Criminal Appeal No. 437 of 2007** and **Godfrey Gabinus @Ndimbo and Two Others v. Republic, Criminal Appeal No. 273 (both unreported)**.

It means the court can act even on the evidence of a single witness, if he is reliable and credible enough to prove the case beyond all reasonable doubt. What is considered is the credibility of the evidence, not number of witnesses.

The said passenger, if was real there while the Appellant was arrested, possibly she was found to be immaterial to their (prosecution) case, that's why they never called her as a witness. Further, it is my settled view that the prosecution failure to call the Appellant's passenger to testify in court did not water down the prosecution case. As just a passenger, she had nothing

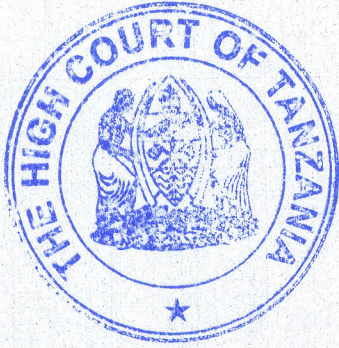
crucial to do for the prosecution case. This complaint therefore has no merit and I accordingly dismiss it.

My analysis on the 3<sup>rd</sup> ground, that, the trial Magistrate erred in law and fact for admitting as exhibit the Motor Cycle with Registration No. MC 603 AST make SUNLG is as follows; as rightly submitted by the State Attorney that, as it was involved in the commission of the offence, transporting the khats in dispute, the trial court had to admit it as exhibit and confiscate the same. What the trial Magistrate had done was the compliance of **section 49(1) of the Drugs Control and Enforcement Act** which provides for forfeiture of the Accused's property involved in commission of the offence. This ground of appeal is meritless as well.

On account of the aforesaid reasons, I am settled in mind that, the prosecution case at the trial court was proved at the required standard. Thus, the Appellant was rightly convicted and sentenced. The **appeal** is therefore **dismissed**.

  
**S.M. KULITA**  
**JUDGE**  
**25/04/2023**

**DATED** at **Shinyanga** this 25<sup>th</sup> day of April, 2023.



*HK*

**S.M. KULITA**  
**JUDGE**  
**25/04/2023**

