

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**CRIMINAL APPEAL NO. 10 OF 2021**

*(Arising from Biharamulo District Court at Biharamulo in Criminal Case No. 85 of 2020)*

**EDWARD CHARLES ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGEMENT**

*Date of last Order: 31.03.2023*

*Date of Judgment: 31.03.2023*

*Mwenda J.*

Before the District Court of Biharamulo at Biharamulo the appellant was arraigned for unlawful possession of Narcotic Drugs contrary to section 15 (1), (2) (C) of the Drugs and Control and Enforcement Act [ CAP 95 R.E 2019]

It was alleged by the prosecution's side that on 10<sup>th</sup> day of May 2020 at Nemba Village within Biharamulo District at Kagera Region the appellant was found in possession of 0.5 Kilograms of prohibited drugs commonly known as bhang.

After the full trial, the trial court was satisfied that the prosecution's side proved its case beyond reasonable doubt. The appellant was then convicted and sentenced to serve a term of thirty years (30) jail imprisonment.

Aggrieved by the decision of the trial court the appellant preferred the present appeal with four (4) grounds.

At the hearing of the present appeal, the appellant appeared in person without legal representation while the republic was represented by Ms. Magili, the Learned State Attorney.

When invited to submit in support of the grounds of appeal, the appellant prayed this court to consider his ground of appeal in making its decision. He otherwise reserved his right to rejoinder.

From the respondent's side Ms. Magili informed this court that the republic does not protest the present appeal. The learned state attorney submitted that there is discrepancy between the prosecution's evidence and the charge sheet. She submitted that the charge sheet which establish as the offence shows the quantity of bhang as 0. 5 kg while the Government Chemist Report shows the weight of bhang as being 111. 5 grams. She submitted that the record does not show how 0. 5 kg dropped to 111. 5 grams.

The learned state attorney submitted that this drop of weight of bhang creates doubt as to whether what the accused was found with is what was sent before the Government Chemist Agency for examination. She further submitted that PW3 who took the samples to the Government Chemistry Agency did not say as to what amount of sample was collected and sent to the Government Chemistry Agency. The learned state attorney said that the weight of exhibit in

drug cases is important in determining whether the court has jurisdiction to determine the matter before it. According to her, this discrepancy prejudiced the accused in making his defence. She then concluded her submissions by stating that the prosecution case was not proved to the standard required. She thus prayed this appeal to be allowed.

I have keenly considered the submissions by both parties, the issue for determination is whether or not the present appeal is tenable.

Going through the court's records as well as the learned state attorney's submissions, it is true that there is variance between the charge sheet and the evidence adduced before the court. The charge sheet which institutes the offence shows the weight of the bhang seized from accused person is 0. 5 kg and this fact was supported by PW1's evidence. However, PW3 who took the samples to Government Chemistry Agency for weighing and analysis did not state the weight of the said bhang but the examination report from the Chief Government Chemist laboratory confirmed that the samples received is bhang weighing 111. 5 grams.

It is trite law that the weight of the substance is crucial in establishing offence so as to determining the court's jurisdiction. This position has been stated by the Court of Appeal in the case of OMARY SAID @ ATHUMANI VS REPUBLIC CRIMINAL APPEAL NO. 8 NO. 58 OF 2022 where the Court held inter alia that;

*"We agree with the learned State Attorney that the weight of the substance is crucial in establishing the offence in as much as it is in determining the court jurisdiction."*

That being the legal position, since in the present case there is a contradiction on the weight of the bhang this court is of the view that the jurisdiction of the court was not properly determined. This prejudiced the appellant to properly defend his case. Without reasonable explanations from the prosecution's side as to how 0.5 kg of bhang dropped to 111.5 grams, it is thus unsafe to conclude that the purported bhang seized from the appellant is the same which ~~came with positive results from Government Chemist (exhibit P-2)~~. On that basis, it is obvious that a charge sheet is at variance with the evidence in relation to the weight of narcotic drugs purported to be seized from the appellant. With the said variance, it cannot be said that the prosecution side proved its case to the standard required. Faced with a similar situation, the Court of Appeal of Tanzania in MASHAKA BASHIRI VS REPUBLIC CRIMINAL APPEAL NO. 242 OF 2017 (unreported) held inter alia that;

*"... We entertain no doubt in this case there is variance between the charge and evidence on the item alleged to have been stolen from PW2. The prosecution case, as rightly argued by the appellant, was not proved to the required*

*standard. In the circumstances we find the second ground to have merits.” [ emphasis added]*

Based on the foregoing authority, since there is variance between the charge sheet and the evidence, the prosecution cannot be said it discharged its duty. In other words, the prosecution failed to prove its case. In the event this appeal is allowed and conviction meted by the trial court is quashed and the sentence is set aside.

I order an immediate release of the appellant unless he is lawfully held in accordance to the law.

It is so ordered.



  
A.Y.Mwenda

**Judge**

31.03.2023

Judgment delivered in chamber under the seal of this court in the presence of Mr. Edward Charles the Appellant and in the presence of Ms. Magili, learned State Attorney for the respondent.



  
A.Y.Mwenda

**Judge**

31.03.2023