

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA

CRIMINAL APPEAL NO 79 OF 2022

(Originating from Lindi District Court in Criminal Case No. 14 of 2022)

ROSE REBSON CHARLESAPPELLANT
VERSUS
THE REPUBLIC..... RESPONDENT

JUDGMENT

7th & 28th June 2023

LALTAIKA, J.

The appellant herein **ROSE REBSON CHARLES** was arraigned in the District Court of Lindi at Lindi (the trial court) charged with Unlawful Possession of Narcotic Drugs c/s 15A(1) and 15(2)(c) of the Drug Control and Enforcement Act Cap 95 RE 2019. When the charge was read over and explained to her, she denied wrongdoing. The trial court entered a plea of not guilty and proceeded to conduct a full trial.

Having been convinced that the prosecution had left no stone unturned in proving their case to the required standard, the learned trial magistrate convicted the appellant as charged. The court proceeded to sentence her to a thirty-year jail term.

Dissatisfied with both conviction and the sentence, the appellant has appealed to this court on 9 grounds. They are reproduced hereunder:

1. ***That,** the trial court erred in law and fact in convicting and sentencing the appellant based on incredible, unreliable and uncorroborated evidence of the prosecution witnesses.*
2. ***That,** the trial court erred in law and fact in failing to realize that there was huge contradiction within the prosecution evidence in respect of various aspects.*
3. ***That,** the trial court erred in law and fact in convicting and sentencing the appellant relying on the evidence of exhibit p2 collectively which was weighed and sealed in the absence of the appellant.*
4. ***That,** the trial court erred in law and fact by failing to appraise objectively credibility of the prosecution evidence.*
5. ***That,** the trial court erred in law and fact in convicting and sentencing the Appellant by failing to evaluate properly the evidence brought before the court as result arrived at a wrong conclusion.*
6. ***That,** the trial court erred in law and fact in convicting and sentencing the appellant in a case whereby the chain of custody was broken contrary to the mandatory of law.*
7. ***That,** the trial court erred in law and fact in convicting and sentencing the Appellant in a case whereby its decision relied on the weakness of the defense rather than the strength of prosecution evidence of accepting everything put on him without cautioning itself on whether the appellant when cross examined understood the nature of questions put on him.*
8. ***That,** the trial court erred in convicting the appellant in a case which no bus ticket was tendered to prove that the appellant boarded the said bus.*
9. ***That,** the trial court erred in law and fact in convicting and sentencing the appellant in a case which the prosecution failed to prove beyond reasonable doubts as charged.*

At a later stage, the appellant filed 9 additional grounds. This makes a total of 18 grounds. For reasons that will be clearer soon, I choose not to reproduce the nine additional grounds.

When the appeal was called on for hearing, the appellant appeared in person, unrepresented. **Mr. Steven Aron Kondoro** learned State Attorney

fended for the respondent Republic. Not being learned in law, the appellant had nothing substantial to add to her expounded grounds. Nevertheless, she reserved her right to make a rejoinder should the need arise.

Taking the podium, Mr. Kondoro announced that the respondent Republic was in full support of the trial court's sentence and conviction. The learned State Attorney proceeded to state that after examining all the grounds, he **identified three key points relating to the 18 grounds**. These points centered around the reliance on expunged evidence that lacked corroboration and credibility, particularly regarding the witnesses' involvement in the conducted search and the seized exhibits. He mentioned that these points encompassed grounds 1, 2, 3, 4, and 5.

While addressing these points, Mr. Kondoro expressed made reference to **Section 8 of the Law of Evidence Act Cap 6 RE 2022**, which discusses the relevance of facts. He explained that the principle of *res gestae* had been established, stating that "The fact which though not in issue are so connected with facts in issue as to form part of the same transaction are relevant whether they occurred at the same time in place or at different time in place."

In summary, Mr. Kondoro described the appellant as a passenger on a bus **named CIVITO, traveling from Masasi to Dar es Salaam**, with the bus registered as T453 DTY. He mentioned that the bus conductor's duty was to verify the passengers and their luggage, and the appellant was admitted as one of the passengers, with her luggage, labeled as "*shangazi*

kaja" sulfate bag, placed in the boot, and **her assigned seat being No. 43.**

According to the bus conductor's account, Mr. Kondoro narrated, they were stopped by police officers at SIDO Area in Lindi during their journey to Dar es Salaam. The conductor was instructed to open the boot, and the police officers conducted a search suspecting the presence of a sulfate bag. The appellant was summoned because her luggage was labeled with the seat number. During the search, Mr. Kondoro asserted, the police discovered that the bag contained dry leaves identified suspected to be *cannabis sativa* **commonly referred to as bangi**. Furthermore, the appellant was found in possession of a smaller bag that also contained bangi leaves. Consequently, the appellant was arrested for further investigation.

Mr. Kondoro stated that it was evident to him that the exhibits presented by the witness were accurate. He further emphasized that such evidence did not require corroboration, as the exhibits seized from the appellant were sufficient. He asserted that there was no doubt regarding the admissibility **of the tendered evidence and the credibility of the witnesses who presented the exhibits**, particularly highlighting the bus conductor's role as an eyewitness. Mr. Kondoro expressed that this aspect made the evidence credible and reliable in court.

In order to ensure the upholding of justice, Mr. Kondoro reasoned, the prosecution took additional steps to define the role of a witness. Referring to Section 127(1) of the Evidence Act, he explained that every person is considered competent to testify unless the court deems them incapable of

understanding and responding to questions due to factors such as age or mental condition.

Mr. Kondoro referred to the Court of Appeal of Tanzania's decision in **WILLIAM NTUMBI VS. DPP** Criminal Appeal No (TANZLII) at page 12, where the Court stated that a court could rely on the testimony of a single witness if that witness could be trusted and provide sound evidence on how the events occurred. He highlighted that all the witnesses were able to substantiate the allegations, including the Government Chemist, who confirmed the presence of bhang (cannabis) in the leaves, with a **weight of 36 kilograms**. He mentioned that Section 48A of the Drug Control Act supported the use of the government chemist's evidence as prima facie evidence to be relied upon. He concluded by requesting the dismissal of grounds 1, 2, 3, 4, and 5.

Moving on to the second point, which encompassed ground 6, Mr. Kondoro addressed the issue of chain of custody. He argued that the appellant had failed to explain why she believed that the chain of custody had been compromised. He referred to the case of **MYCHEL ADRIANO TAKAHINDENG V. REPUBLIC** Criminal Appeal No 76 of 2020, where the apex Court stated that credible oral evidence is sufficient to establish a chain of custody. He expressed the view that, from the side of the prosecution, the chain of custody had been adequately established without any doubt. He requested the dismissal of this ground and noted that similar arguments were repeated in several other additional grounds.

On the third point, Mr. Kondoro stated that it revolved around a complaint regarding the burden of proof for the prosecution case beyond a reasonable doubt. He mentioned that this point was reiterated in the additional grounds of appeal. Referring to Section 110 of the Evidence Act, he emphasized that the law stipulated the requirement of proving the prosecution case beyond any doubt. He expressed a strong belief that the case had indeed been proven beyond a reasonable doubt.

Mr. Kondoro highlighted the submission of a seizure certificate as one of the exhibits. To support his argument, he referred to the Court of Appeal of Tanzania's case of **RAMADHANI IDD MCHAFU V. REPUBLIC** Criminal Appeal, No. 328 of 2019 pp 14-15, where the court had stated that even if the seizure certificate was to be ignored, there was sufficient evidence from PW1 and PW2 to establish that the appellant was found in possession of a pistol and seven rounds of ammunition.

The learned State Attorney's intention in referencing this case was to bolster the argument that the prosecution had proven its case beyond any doubt, particularly through the search conducted in the car where the appellant was present. He asserted that the republic was convinced, beyond any doubt, that the luggage in question belonged to the appellant, and the search carried out by the police adhered to legal requirements. In the event of any doubts concerning the issuance of a seizure receipt, the learned State Attorney reasoned, the omission was not fatal. He requested the dismissal of this ground as well.

In conclusion, Mr. Kondoro expressed support for the sentence, as dealing in illegal drugs posed hazards to both the present and future members of the Tanzanian society.

The appellant, on her part, expressed her concern regarding the witnesses. She explained that the conductor who testified in court was not the one who had allowed her onto the bus. She mentioned that she raised her hand in court to convey that she did not recognize the conductor, but the magistrate instructed her to listen to him regardless. The witness who identified herself as a passenger was also unfamiliar to the appellant. She stated that she was seated next to a male individual.

When boarding the bus, the appellant asserted, she informed the conductor that she only had TZS 27,000 and did not have the full fare. The conductor insisted that she add TZS 1,000, but she explained that she did not have the money. He then asked if she had any other luggage, to which she replied that she only had her handbag. The conductor tapped her on the back as a signal that she was allowed to board.

The appellant narrated further that she **boarded the bus and took seat number 12**. The journey began, and after approximately three stops, the conductor approached her and requested that she move to another seat as her original seat was occupied. He directed her to seat number 43. There, she encountered a young man carrying two bags, one gray and another black. She asked him if the bags belonged to him, but he denied it. She moved the bags to a nearby place, and the journey continued. At some point, the bus was stopped by the police. They took the vehicle to the police station.

and ordered all passengers who had boarded the bus from Mtandi in Masasi to disembark. The appellant, having boarded at Mtandi, also got off along with many others.

The police inspected the passengers' phones and returned them to the respective owners, except for one young man who was forcibly taken aside. The remaining passengers were instructed to wait. After a few minutes, a police officer approached with the conductor and spoke in Kipare, asking whom they should place the load on.

I have **dispassionately considered the grounds of appeal**, submission by the learned State Attorney against the grounds, additional oral statement of the appellant and records of the lower court. I will be guided in my analysis, by the OWEPP [Offence, Witnesses, Evidence, Principles) shorthand. On the offence, I will determine whether it exists in the first place, has been correctly cited including all elements needed to prove both the mens rea and actus reus and its social economic context. As for Witnesses: whether they were credible and relevant and whether their testimony was relevant to the charged.

I will then move on to the Evidence and here I intend to invoke my powers as the first appellate court to reevaluate the whole evidence and should the situation so dictate, come up with my own interpretation. Finally, I will relate the findings with existing legal principles as a basis for the decision.

The Offence of ***Trafficking in Drugs*** or as it is known in Kiswahili *Usafirishaji wa Madawa ya Kulevya* is considered very serious in our country. This is due to the devastating effects of illegal drugs on the health and

welfare of the people. Narcotic drugs are also responsible for soaring youth criminality including armed robber. In addition to the correctly cited sections namely section 15A(1) and (2) (c) of the **Drug Control and Enforcement Act Cap 95 as Amended by The Written Laws Misc. Amendment Act No. 5 of 2021**, Tanzania is also a signatory to a number of international agreements for combating trafficking in illicit drugs.

The prosecution witnesses or PWs for short that testified as per the trial court's records were Eliamin Ismail Mkenga (PW1), Government Chemist, Abdul Juma Mkambe (PW2), bus conductor, Georgina George Mtemihonda (PW3), G.212DC/CPL Hezron (PW4), G.4652 CPL Elias (PW5) and A/Insp. Jasper (PW6). There was only one defence witness (DW1) the current appellant (then accused).

I have considered the testimony of all these witnesses, and I see no major contradiction going to the root of the case. They were all credible and shared what they knew about the case that the appellant was charged with.

On the evidence, the Prosecution tendered the following exhibits: **Chief Government Chemist Report** (Taarifa ya Uchunguzi wa Maabara ya Serikali (Fomu Na. DCEA 009)-exhibit P1, Small bag and one Shangazi Kaja containing two sulphate bags having Government Chemist Laboratory seal, Lab No. SZL/55/2022 containing bhangi-exhibit P2, Exhibit Book/PF.16-exhibit P3, Certificate of Seizure-exhibit P4, appellant's bus ticket-exhibit P5 and Form DCEA 001-exhibit P6

I am alive to the Court of Appeal of Tanzania's insistence that analysis and evaluation of evidence entails an objective scrutiny of both the

prosecution and defence evidence and not merely a summary or narration of it. See, **GAUDENCE SANGU VS REPUBLIC** (Criminal Appeal No. 88 of 2020) [2022] TZCA 784 (7 December 2022), **LEONARD MWANASHOKA V. REPUBLIC**, Criminal Appeal No. 226 of 2014 and **RASHID ISSA V. REPUBLIC**, Criminal Appeal No. 416 of 2016 (both unreported). I have gone through the impugned judgement and proceedings and there is no doubt that the learned Magistrate considered both the prosecution and defence evidence.

This brings me to the legal issues and principles raised in the appeal and the respondent's response. These are: chain of custody and proof of the case beyond reasonable doubt. In the case of the case of **PAULO MADUKA & OTHERS VS REPUBLIC** (Criminal Appeal No. 110 of 2007) [2009] TZHC 69 (28 October 2009), the Court of Appeal of Tanzania stated:-

"By "chain of custody" we have in mind the chronological documentation and/or paper trail, showing the seizure, custody, control, transfer, analysis, and disposition of evidence, be it physical or electronic. The idea behind recording the chain of custody, it is stressed, is to establish that the alleged evidence is in fact related to the alleged crime - rather than, for instance, having been planted fraudulently to make someone appear guilty. Indeed, that was the contention of the appellants in this appeal. The chain of custody requires that from the moment the evidence is collected, its every transfer from one person to another must be documented and that it be provable that nobody else could have accessed it."

The chain of custody in the present matter was considered the trial court. In short, the trial court stated

"PW5 arrested the accused with two bags and filled in the certificate of seizure (exhibit P5). Then the...bag [was] taken to the Lindi Police Station stored in a

strong room by PW4 and on 22/03/2023 he released the same to PW6 who took it to the Chief Government Chemist for examination (PW1). PW6 then took it back to PW4 who stored them on the same day 22/3/2022. On 16/05/2022 PW4 released the same to D/CPL Rose who brought the same to court."

I have taken the liberty to examine the records in the light of the above statement. I am convinced that as per the above analysis by the learned trial magistrate leaves no doubt that the chain of custody was maintained.

As for the proof of the case beyond reasonable doubt, indeed the prosecution is duty bound to prove two elements, first, that the items trafficked were narcotic drugs, and second, that the items belonged to the accused person.

The dry leaves suspected to be *bhang* were taken to the government chemist as per the acceptable standard operating procedures. Among the prosecution witnesses that were lined up was **Government Chemist Eliamin Ismail Mkenga (PW1)** testified how it was established scientifically that the dry leaves were indeed *cannabis sativa*. This closed the chapter on the first element.

As for the second element namely whether the "dry leaves" belonged to the appellant, I must say this has taken quite a bit of my time. I have gone through the lower court records and read over and over the statement of the appellant on appeal.

Apparently, the appellant stated that she is originally from Maji-ya-Chai area in Arusha. On the fateful day she was travelling while wearing a hijab. She claimed that the police who arrested **her spoke in Kipare without**

knowing that she too was a *Mpare* and from what they were saying, they were plotting to get someone to be held responsible (kumbebesha mzigo).

Frankly, I cannot see how the bus conductor and other people present would assist the police to turn the appellant into a sacrificial lamb. I find the defence farfetched. The appellant is a woman. It is not common for women in this country to be associated with *bangi*. She probably thought it is not easy for her to be suspected or even linked to trafficking in drugs. Unfortunately, the unexpected happened. The rest is nothing but regret.

Premised on the above, I have no other choice but to dismiss the appeal in its entirety for lack of merit, as I hereby do.

It is so ordered

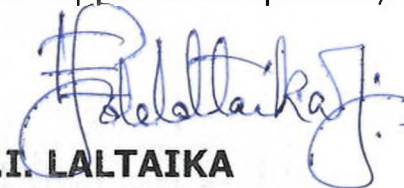


Court:


E.I. LALTAIKA
JUDGE
26/6/2023

Judgement delivered under my hand and the seal of this court this 26th day of June 2023 in the presence of **Mr. Steven Aron Kondoro**, learned State Attorney and the appellant who has appeared in person, unrepresented.




E.I. LALTAIKA
JUDGE
26/6/2023

Court

The right to appeal to the Court of Appeal of Tanzania fully explained.




E.I. LALTAIKA
JUDGE
26/6/2023