

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA SUB- REGISTRY
AT ARUSHA

CRIMINAL REVISION NO. 6 OF 2021

(Original Criminal Case No.83 of 2021 before the Resident Magistrates'
court of Arusha at Arusha)

THE REPUBLIC APPLICANT

VERSUS

JOSEPH KIDALI PARIROO RESPONDENT

RULING

05th & 27th July 2023

KAMUZORA, J.

Before the resident magistrates' court of Arusha, the respondent herein was charged for the offence of trafficking narcotic drugs contrary to section 15A (1) and (2) (c) of the Drugs Control and Enforcement Act Cap 95 RE 2019. Following his plea of guilty to the offence, he was convicted and sentenced to serve 12 months conditional discharge.

This revision was instituted suo motu on the directives of the Judge In charge. According to the letter and minutes attached to the case file the original case file was forwarded to this court by the Resident Magistrate In charge of Arusha Resident Magistrates' court following directives by the

Judge in charge during inspection. Upon receiving the case file, it was directed that the revision application be instituted hence this application.

Effort was made to notify the parties to appear and address this court on the revision and Mr. Alawi Hassan, State Attorney entered appearance for the Republic. However, despite several notices and summons by publication, the respondent herein could not enter appearance. This court asked the learned state attorney to address this court on correctness of the proceedings and orders of the trial court.

Mr. Alawi in the outset was in support of the trial court proceedings, conviction and sentence imposed by the trial court. He explained that the respondent was charged under section 15A (1) of the Drugs Control and Enforcement Act Cap 95 RE 2019 read together with section 38 of the Penal Code, Cap 16. That, the Written Laws (Miscellaneous Amendment) Act No. 5 of 2021 which came into force on 11th October 2021, its section 19 amended section 15A of the Drugs Control and Enforcement Act. The provision of section 15A (1) of the Drugs Control and Enforcement Act before amendment used the words '*shall be liable to a term of thirty years.*' That, the words used gave discretion to the court to sentence the accused for the term from 0 to 30 years. That, the court was not forced to impose 30 years imprisonment and that is why it imposed conditional

discharge to the respondent. That, after the amendment, the court could not impose sentence less than 30 years. The amendment inserted the word '*not less than 30 years*' to insist that the sentence imposed could not be less than that provided by the statute. He added that similar interpretation was given in the case of **Mawazo Kutamika Vs. Republic**, Criminal Appeal No. 64 of 2020, CAT at Arusha, page 14 (unreported). That, the court referred another case of **Sokoine Mtahani Atichomongwa Vs. Republic**, Criminal Appeal No. 459 of 2018 which he urged to be guided with. He was of the opinion that the trial court correctly sentenced the respondent. He added that the proceedings of the trial court were clear and not in contravention of any law. He therefore urged this court to bless the proceedings and sentence that was imposed by the trial court.

My observation is similar to that of the learned State Attorney. In my perusal to the proceedings, there is nothing that can be pointed out as prejudicial to parties. It is my belief therefore that this revision was prompted by the sentence imposed by the trial court.

Reading the charged sheet, the respondent was charged under section 15A (1) and (2) (c) of the Drugs Control and Enforcement Act Cap 95 RE 2019. The said section reads: -

*"15A.-(1) Any person who traffics in narcotic drugs, psychotropic substances or illegally deals or diverts precursor chemicals or substances with drug related effects or substances used in the process of manufacturing drugs of the quantity specified under this section, commits an offence and upon conviction shall be liable to imprisonment **'for a term of thirty years'**.*

(2) For purposes of this section, a person commits an offence under subsection (1) if such person traffics in-

*(c) cannabis or khat weighing **not more than fifty kilograms.**"*

From the wording of the above provision, I agree with the learned state attorney that it does not impose mandatory minimum sentence of thirty years. The discretion on the sentence to be imposed is left to the court to decide. In the case of **Sokoine Mtahali @ Chomongwa Vs. The Republic**, Criminal Appeal No. 459 of 2018, it was held

*"The above phrase, **"shall on conviction, be liable to imprisonment for a term of thirty years"** to which we have supplied emphasis, **does not impose the custodial term of thirty years as the mandatory penalty.** It gives discretion of the trial court, subject to its sentencing jurisdiction, to sentence the offender up to the maximum of thirty years' imprisonment depending upon the circumstances of the case after considering all mitigating and aggravating factors."*

Being guided by the above case law, I conclude that by imposing 12 month's conditional discharge for the offence of trafficking 4 kilograms of bhangi the trial magistrate exercised properly her sentencing jurisdiction. I therefore see no reason to interfere with the trial court's finding. This revision is therefore dismissed.

DATED at **ARUSHA** this 26th Day of July 2023.




D.C. KAMUZORA

JUDGE

